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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 4 December 2003

# Journal des débats (Hansard)

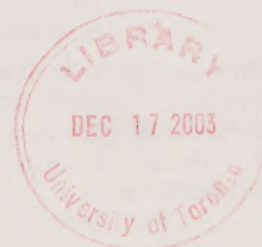
Jeudi 4 décembre 2003

**Standing committee on  
public accounts**

Organization

**Comité permanent des  
comptes publics**

Organisation



Chair: Norman W. Sterling  
Clerk: Anne Stokes

Président : Norman W. Sterling  
Greffière : Anne Stokes

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Thursday 4 December 2003

Jeudi 4 décembre 2003

*The committee met at 1015 in committee room 1.*

## ELECTION OF CHAIR

**Clerk of the Committee (Ms Anne Stokes):** Good morning, everyone. I'm the clerk of this committee. My name is Anne Stokes, and I'd like to welcome you all to the standing committee on public accounts.

Honourable members, it is my duty to call upon you to elect a Chair. Are there any nominations?

**Mr David Zimmer (Willowdale):** Yes, I'd like to nominate Norm Sterling as Chair of the committee.

**Clerk of the Committee:** Mr Sterling has been nominated. Do you accept the nomination?

**Mr Norman W. Sterling (Lanark-Carleton):** Yes, I do.

**Clerk of the Committee:** Are there any further nominations? There being no further nominations, I declare nominations closed. Mr Sterling is elected Chair of the committee.

## ELECTION OF VICE-CHAIR

**The Chair (Mr Norman W. Sterling):** Why don't I just sit here for now. Can we have nominations for the Vice-Chair?

**Mr Zimmer:** I'd like to nominate Julia Munro as Vice-Chair.

**The Chair:** Are there any further nominations? It's unanimous. Julia, you are the Vice-Chair.

**Mrs Julia Munro (York North):** Thank you.

## APPOINTMENT OF SUBCOMMITTEE

**The Chair:** The committee runs by accepting from a subcommittee suggestions as to the agenda, the schedule and those kinds of things. So we would like to call on each of the parties, the Liberals and the Conservatives, for nominations as to the members of the subcommittee.

Jim, who would you like on the subcommittee?

**Mr Jim Flaherty (Whitby-Ajax):** I'd like to nominate Julia Munro. I think she'd be terrific.

**The Chair:** And from the Liberals?

**Mr Zimmer:** I'd like to nominate Laurel Broten. I think she'd be terrific.

**The Chair:** David, would you like to move both of those names?

**Mr Zimmer:** All right. I'd like to move Laurel Broten and Julia Munro.

**The Chair:** So Julia Munro and Laurel Broten have been nominated for the subcommittee. Any further nominations? OK, you're members of the subcommittee.

**The Chair:** There was some discussion before the formal meeting took place that there is some movement afoot to change the standing orders to allow Shelley Martel, a member of the NDP caucus, to be a member of the subcommittee, but we are going to wait for that to occur.

I would like to ask permission of the committee as a whole to invite Shelley to the subcommittee meetings as a non-voting member until that particular issue is resolved.

**Mrs Liz Sandals (Guelph-Wellington):** Do you need a motion to that effect?

**The Chair:** No, I won't. If anybody objects to it, I would like to hear that objection.

## COMMITTEE BUSINESS

**The Chair:** The subcommittee will be meeting in the next little while to identify parts of the auditor's report which the public accounts committee would like to review. Our most intense meetings will take place some time in February. We will likely meet for either two or two and a half weeks during that period of time to review various parts of the auditor's report. The subcommittee will be deciding between the three parties as to which parts of the auditor's report it would go through. So members of the committee in each party can advise their nominee as to whom they might want. That subcommittee report will be brought back to the committee and the committee will either endorse or change that particular report and go forward.

Anne Stokes is the clerk. Anne, is there anything else you would like us to discuss or deal with today?

## 1020

**Clerk of the Committee:** The important thing is with the organization. We now have a Chair and a Vice-Chair, and we can proceed with business. Unless the committee wishes to discuss how the committee works or perhaps have an overview from Mr McCarter, the assistant auditor, we could conclude today's business if you so wish.

**The Chair:** Oh, yes. I think we should give the auditor, Jim McCarter, an opportunity to say a few words.

**Mr Jim McCarter:** I'd like to welcome everybody to the committee. I think you'll find it's a good committee.

Normally the auditor attended the subcommittee meetings to provide advice and assistance, that sort of thing. Would you like that to continue?

**Mr Richard Patten (Ottawa Centre):** Usually, it was by invitation. It wasn't necessarily automatic, because sometimes it wasn't necessary.

**Mr McCarter:** Yes, if it was administrative. I'm just kind of wondering what protocol you'd like to follow—if the subcommittee is going to be getting together to decide the—

**The Chair:** Why don't I discuss that with members of the subcommittee, because essentially, as I understood it, often the meetings would take place very informally so that if everybody on the subcommittee was available after question period, they might have a meeting for 10 or 15 minutes or whatever it is in order to deal with a particular issue. Rather than chasing around to find you, we would go ahead with that.

I'm sure that your advice will be sought either before or maybe during the meeting when we're getting down to the crunch as to what we want to decide as to which parts of the report to refer to.

As far as the Chair of both the subcommittee and the committee, my tendency would be to say that if any one of the representatives on the subcommittee wanted you there, you'd be invited.

**Mr McCarter:** OK. Maybe I could just point out a couple of what I call "hot issues" I think are going to be coming down the pipe and that you might want to be aware of.

The first thing is the appointment of a new Provincial Auditor. Maybe you're aware the former auditor, Erik, retired September 30. Under the Audit Act, the way it works is there's an order in council by the government to address the assembly, but under the Audit Act it's on consultation with the Chair of the public accounts committee. I think the act's worded that way so that you get the opposition input into it.

Maybe I'll just mention that—and I think this motion's gone—there was a motion in the Legislature regarding the appointment of the auditor in June of last year. Basically, what they had decided was that they were going to have a selection committee chaired by the Speaker with a representative from each party, and that's the process that was in place then. Just to update you, I think this matter's been referred to the Speaker, but I'm not sure what decision is going to be made and how it's going to be handled.

**The Chair:** But it is an order-in-council appointment?

**Mr McCarter:** Yes, it is.

**The Chair:** It's not a vote in the Legislature like some of the other legislative officers.

**Mr McCarter:** Yes, I think it's an order-in-council on address of the assembly, but the act says it's an order-in-

council on consultation with the Chair of the public accounts committee. So I'm not sure how the process is going to work.

**The Chair:** I think, with those words, then it's incumbent on me to ask the government what their intention is with regard to the process.

**Mr McCarter:** Yes, because I think the previous process where they said the Speaker was going to chair the panel with a member from each party—how they did it in the past, when Erik got the position, basically it was the full public accounts committee that was the selection committee. I know they put an ad in the Globe and Mail and people applied. I think the Office of the Legislative Assembly did the administrative work and then people came before the public accounts committee, were interviewed, and the public accounts committee I think made the decision and then the Chair would consult with the government. But this time they were going a bit of a different route. So that's just by way of background as to where that stands, and I think it's with the Speaker's office right now.

**The Chair:** On behalf of the committee, I'll talk to the Speaker then, and I think I should talk to the government as to what their intent is because essentially they hold the cards.

**Mr McCarter:** Yes, because it is an order-in-council appointment.

The second thing I'd just mention, more for the subcommittee, but I guess for everybody's attention: I think the government is going to be moving ahead with amendments to the Audit Act. They are amendments to expand the auditor's power to allow us to get into value-for-money auditing for the broader public sector. That's hospitals, universities, colleges and children's aid societies. That's about 50% of provincial expenditures. For about 15 years now we've been trying to get in there and do value-for-money auditing, but we haven't been able to get the act amended.

I've been having ongoing discussions with the Ministry of Finance. We're not sure about the timing of that bill, but we think it's going to be tabled fairly quickly. I expect that that bill probably will be referred to the standing committee on public accounts for clause-by-clause review. So that's something to keep in mind when you're scheduling your hearings.

The other thing I'd point out is that the government had discussions with Gerry Phillips and the staff at MBS regarding this partisan advertising bill that they're in the process of looking at right now. I think there's going to be a fairly heavy involvement of the Provincial Auditor's office with respect to review of partisan advertising. Consequently, when that bill is tabled I wouldn't be surprised if that bill as well was referred to the standing committee on public accounts for clause-by-clause review.

Those are just a couple of things to keep in mind that could come up over the course of the next few months.

**The Chair:** I think we have a couple of resignations from the committee.

**Mr McCarter:** It may not come to pass. I'm just throwing that out as these could be coming down the pike.

**The Chair:** In that light, I know the Board of Internal Economy deals with your budget.

**Mr McCarter:** Yes.

**The Chair:** Have you got any kind of estimate what kind of money is involved here in response to these, or are you going to have to wait and see what the bills are?

**Mr McCarter:** I'm a bit reluctant to tell tales out of school on this, but one of the things they're looking at is on the partisan—the advertising thing. It could have some impact on our office, and I think they're going to have to make a decision whether, if there are extra resources required—and we're not talking a lot of resources for that, but would it be funded out of our appropriation, in which case we go before a Board of Internal Economy, which is an all-member committee to get our budget approved. Usually, it's chaired by the Speaker and there's proportional representation on it. I think they've announced—

**The Chair:** It's not proportional. The government is always given majority on it, even in a minority situation.

**Mr McCarter:** The funding for that, for instance, could be through the Board of Internal Economy. They also have the option of doing it by statutory appropriation. They could basically say the expenses associated with this would be paid out of a statutory appropriation. That wouldn't be significant.

With respect to the budgetary impact, if we get our mandate extended to do VFM audits of the broader public sector—I have to be blunt—I don't think it would have a significant impact right away. It's something we would be ramping up to do, but once we see how the bill is laid out, we'd have a little better feel for it. If it comes before the committee for clause-by-clause discussion, that's certainly something I would welcome a question on at that time—you know, "What impact, auditor, do you think this would have on your budget, and how do you see it playing out?" It could be that it may not be implemented immediately. What they might say in the bill is, "We're going to put it in but it's not going to come into effect until 2005-06." So I'd have a better idea on what the budgetary impact would be once I see the bill.

**The Chair:** Perhaps, Anne, if you would like to outline for the new members what happens on an annual basis.

I don't know whether members are aware of the normal rhythm of the committee, save and except this would be somewhat unusual in terms of the committee dealing with an actual piece of legislation. The committee, as I understand it, normally doesn't deal with a piece of legislation that is referred to the committee. The committee then would probably have some form of public hearings for people to come in to talk about the bill. If the bill is going to deal with municipalities and hospitals and boards of education, that might attract a significant number of people wanting to come in front of

the committee to express their opinions about it. But outside of that, perhaps, Anne, you could go through what the normal pattern is on a yearly basis for the committee.

1030

**Clerk of the Committee:** Typically, the auditor tables his report late in the year—November or early December. The committee then has a chance to review the report and generally make selections from that report. In the past it's been three selections per party. That's the way it has worked in the last while. That means the committee then will review those particular sections in more detail. Generally, they invite the deputy ministers for the ministries involved to appear before the committee for a day. It could be half a day or it could be a day. We generally say we'll start in the morning and we'll see how late it goes. It gives the deputy minister then the opportunity to address the auditor's concerns in the auditor's report, an opportunity to say what actions they've taken in response to that, actions they anticipate, and so on. The committee then has an opportunity to ask questions and to pursue whatever issues they find important.

**The Chair:** That's normally done in between legislative sessions.

**Clerk of the Committee:** That has been the practice. It doesn't have to be, but it's an opportunity for the committee to get together for—rather than just an hour and a half or two hours that the committee normally sits, they have the opportunity to sit for a longer period, and it also provides the ministers the chance to come, to set a day aside in their schedule rather than setting aside two hours here and two hours there.

**The Chair:** My understanding is that last year, for instance, they sat for nine days—

**Clerk of the Committee:** In February.

**The Chair:** —in February, four days a week, and then—

**Clerk of the Committee:** And then there was one day.

**The Chair:** —one extra day.

**Clerk of the Committee:** Yes, that's right.

Jim, did you have something to add to that?

**Mr McCarter:** One thing I'd add too is that typically we work with legislative research and we prepare a briefing document before each meeting. It's got a bit of an outline and some questions.

The other thing too is that normally the meetings will run from 10 o'clock to 12 o'clock, but what we've been doing for the last few years is that from 10 to 10:30 we would hold an in-camera briefing just for the members of the committee, where we would walk through what's in the briefing document, a bit of an outline of what our more significant concerns were. Again, it gives the members a bit of a heads-up, so when the deputy and the ADM and the program directors come in, I know you've read the document and everything, but you're more up to speed on what the issues are. I would throw that out as whether the committee would want that sort of process to continue.

The alternative is that the deputy comes in at 10 o'clock and you get going right away with the questions. It's been about three or four years now that we've had this 30-minute in-camera briefing where we'd talk to issues, leg research would discuss it, just to bring you up to speed on what the particular issues are in the report. So I would leave that with you as well.

**Clerk of the Committee:** The auditor is here to provide that kind of assistance and clarification to committee members.

I can take the opportunity to introduce Ray McLellan. He's a research officer. Elaine Campbell, at the back of the room, is also a research officer. They are assigned to the committee and provide, again, that kind of assistance. I might let Ray talk a bit about what you do.

**Mr Ray McLellan:** My comments will dovetail with Jim McCarter's comments and Anne's.

Legislative research is part of the legislative library and, as hopefully most of you know, we provide non-partisan research for MPPs and committees around the assembly. With Elaine Campbell, we've served on this committee for a number of years; I hate to say how long.

Essentially we have two roles to play, as Jim has just mentioned, prior to those hearings in February. We prepare background documents that in the past have been useful to members. What we do is I think more value for money, or a value-added document, in terms of identifying issues in these long reports, and very dense reports, I might say, and in addition questions, kind of section by section so that you can follow it. As well as issues, we have questions in there.

This document would go down to Jim McCarter's office, so he has a chance to go through it and look at the questions, and add to questions or maybe say that some of these questions aren't terribly relevant, to point us in the right direction when we get into some areas.

In addition to the questions and issues paper, we provide background from the public accounts, from Hansard—in other words, debate in the House. We would have information in there from the ministry's Web site if there are recent announcements, business plans. So we try to provide a fairly comprehensive document. As I say, Jim McCarter has a chance to look at that and add to it. That would be distributed, hopefully, at least a week before each of the hearings during the winter months.

The second role that we have is the report writing, so following the issue of the auditor's report last week. During the spring and into the summer and next fall we prepare reports like this on a topic-by-topic basis.

Ideally, following each hearing we would have a few minutes so we can get instructions from the committee to essentially say, "These are the areas we're really interested in, and let's go after the following four, five or six areas and prepare recommendations," and at times we may get direction through the Chair on what those recommendations may look like. That hasn't always happened. At times we just finish off the hearings and whatever the topic is the next day and leave it to legislative research to work through Hansard, to work through

the discussion and speak with the Provincial Auditor about where we might be going. The onus is on our shoulders to come up with these reports, and they're brought back to you six or eight weeks later to discuss them.

One of the points I wanted to raise, to give you some sense of the value of these reports: There's a section in here asking the ministry to report back within 120 calendar days on the contents, recommendation by recommendation. I was looking around the table here to Shelley and to Julia and also to Richard Patten. That has been the case. The ministries have been quite serious about getting back to us within that 120-day time frame. That kind of ties in that accountability loop, and when the auditor does follow-ups two years from now on these audit reports, his office would have a look at this report and the follow-up and commitments from the ministry. So I think that's an important point, to make sure that the work we're doing is valued and taken seriously and that in fact there is some follow-up on those reports. That's essentially the role of legislative research.

In terms of the background documents used from hearings in February, if there's something else that you want in there or you would specifically like something, you can certainly ask us to go ahead and do that. But, as I say, all this is done through the direction of the Chair. So that's essentially our role.

**Clerk of the Committee:** So those meetings, the report writing after the public hearings with the ministries in question—the rest of the year is generally then spent on that kind of detailed time with the draft reports, going through them, making recommendations and then, as the committee feels that it's finished and adopts a report, we print it up and it's tabled in the House.

**The Chair:** That's normally done on Thursday mornings when we're back in session, let's say, until May and June.

**Clerk of the Committee:** Yes. That's right. The committee meets Thursday mornings. We've generally been meeting between 10 and 12, and we go through while the House is sitting and do that report writing.

In terms of bills being referred to the committee, it has happened before. The primary role of the committee of course is reviewing the auditor's report, but there have been a number of instances where bills have been referred. Last year there were, I believe, three private members' public bills referred to the committee. One was amendments to the Audit Act, one was on accountability in boards of directors in the public service and one was on—

**Mr McLellan:** ABCs, and I can't remember the other one.

**Clerk of the Committee:** I forget now what it was. I remember the numbers, but I can't remember what they were. So the committee has worked that into its schedule. I don't think public hearings were held on those three particular bills.

**Mr McLellan:** No.  
*Interjection.*

**Clerk of the Committee:** On Caroline Di Cocco's there were. That's right.

So that's just something the committee works into its schedule.

**The Chair:** The other part too is that normally during the summer months there is a conference of all the public accounts committees for the various provinces. We have to ask permission of the Legislative Assembly to go there and get the necessary funding to do that. This year it's taking place in Fredericton, New Brunswick, I believe.

**Clerk of the Committee:** Yes.

**The Chair:** Do you know what the timing of that is? I'm just thinking of members in terms of—

**Clerk of the Committee:** I believe it's August 31 to September 2, and it's a joint conference held with the Canadian council of public auditors, correct?

**Mr McCarter:** Basically it's twofold. It's all the public accounts committees. Representatives from the public accounts committees from across Canada get together and the legislative auditors get together. They have some joint sessions together as a group and then we each have some separate sessions where the public accounts reps will get together and the legislative auditors will get together. It's about a two-and-a-half-day conference.

**The Chair:** At the subcommittee, no doubt we will be discussing when that time frame is going to be in February. If any members of the committee have holiday plans or something during that period of time, you should let your caucus representative know about those conflicts, because we'll try to avoid messing up anybody's plans during that period of time if possible.

There's no question that those two and a half weeks are very, very important in the whole process for this committee, probably the most important time during the year.

Does anybody else have any questions they would like to direct to me or to anybody else here?

**Mrs Munro:** Just a comment in reference to the point you made about the dates in February. This is a committee I think that others who have been on it would agree is more difficult to have someone substitute be-

cause there is that ongoing obligation in terms of the report writing. It's really difficult if you weren't here during the period of the public hearing. You're obviously dependent upon the notes in Hansard and the work of Ray, our researcher, but it's really helpful when you've been here for that part of the process to then be able to make a better contribution on the side of the report writing.

I just want to endorse what the Chair has said with regard to making the date something we all can live with as much as possible.

**Mr McCarter:** There is no question—I used to be an assistant deputy minister before I came over with the Provincial Auditor's office—and just knowing from speaking with the deputy ministers, they take the recommendations of this committee extremely seriously. Of all the committees, to be honest, that they don't want to appear before, probably public accounts is at the top of the list. They really do take the work of the committee very seriously, and your recommendations are taken seriously; they're going to respond in writing to them. As Ray mentioned, the committee really does complete the accountability loop with respect to our work.

**Clerk of the Committee:** I might add one thing. Speaking of that, we do ask for a follow-up on all the recommendations for each ministry to get back to us.

I just want to clarify, if anybody is interested in what happened last year: I have some responses that we've received from ministries regarding reports that have not been distributed to the committee, because of course the committee didn't exist until just this week.

If anybody is interested in any previous work, I would be happy to distribute that to you. It's on file. I have it. It's a matter of public record, but I'm assuming that you may not necessarily want to have that information right now, and we'll just start fresh with this new report. But by all means, I have the information, and if you'd like to see the previous work of the committee, just let me know.

**The Chair:** OK. No further business? Let's adjourn.  
*The committee adjourned at 1044.*

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### STANDING COMMITTEE ON PUBLIC ACCOUNTS

#### **Chair / Président**

Mr Norman W. Sterling (Lanark-Carleton PC)

#### **Vice-Chair / Vice-Présidente**

Mrs Julia Munro (York North / -Nord PC)

Ms Laurel C. Broten (Etobicoke-Lakeshore L)

Mr Jim Flaherty (Whitby-Ajax PC)

Mr Peter Fonseca (Mississauga East / -Est L)

Ms Shelley Martel (Nickel Belt ND)

Mr Bill Mauro (Thunder Bay-Atikokan L)

Mrs Liz Sandals (Guelph-Wellington L)

Ms Monique Smith (Nipissing L)

Mrs Julia Munro (York North / -Nord PC)

Mr Norman W. Sterling (Lanark-Carleton PC)

Mr David Zimmer (Willowdale L)

#### **Substitutions / Membres remplaçants**

Mr Richard Patten (Ottawa Centre / -Centre L)

#### **Also taking part / Autres participants et participantes**

Mr Jim McCarter, Acting Provincial Auditor

#### **Clerk / Greffière**

Ms Anne Stokes

#### **Staff / Personnel**

Mr Ray McLellan, research officer,  
Research and Information Services

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First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

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JAN 20 2004

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Thursday 18 December 2003

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*The committee met at 1008 in committee room 1.*

## SUBCOMMITTEE APPOINTMENT

**The Chair (Mr Norman W. Sterling):** OK, I'm going to call the meeting to order. I recognize a quorum. We have a couple of substitutions today. Mr Yakabuski is here for Julia Munro, and the other one is Mario, but I'm not recognizing him as a—no, we'll recognize him as well.

**Mr Mario Sergio (York West):** It's good to be here.

**The Chair:** As you know, we changed the standing orders this week, having the NDP have a member on the subcommittee. I believe we have a motion to appoint a member from the NDP to the subcommittee list.

**Mrs Liz Sandals (Guelph-Wellington):** I move that the membership of the subcommittee on committee business be revised as follows:

That Ms Martel be appointed in addition to Mrs Munro and Ms Broten.

**The Chair:** Any discussion? Any opposition? Carried.

## SUBCOMMITTEE REPORT

**The Chair:** The second part of business that we're going to deal with today deals with our subcommittee meeting, which we had yesterday, which was attended by Ms Martel, even though I guess she wasn't formally a member of the committee. We were able to agree on all matters, so that there was no need for any kind of vote or anything like that in the subcommittee. We discussed those matters which we were going to examine from the auditor's report of last year, and we're going to be doing those discussions in February.

After some discussion, we settled on some dates in February for our hearings: Starting on February 9, sitting for four days of that week, from the 9th to the 12th; from the 16th in the next week to the 19th; then, because the Liberal caucus is having some kind of conference in Windsor from the 20th to the 22nd and some members may be staying in Windsor on the 23rd, we decided that we would sit on the 24th, being the ninth day of our hearings. So our present schedule is that we have four days from the 9th to the 12th, four days from the 16th to the 19th, and the 24th.

The House leader will be asking, I believe, today for this committee to have permission to sit 12 days. If for

some reason we are unable to complete our business by the 24th, it would be likely we would be looking to go to the 25th. So I would just ask you to keep the 25th open on your schedules, as well as the other dates.

As we talked about before, we can substitute people in to the committee. This committee really doesn't lend itself well to substitution, because the writing of the report can come, in its final form, two or three months after we would have the hearings in February. So if you are going to be away, it will cause some difficulty in your participation later in the discussions on the report, because you won't be there first-hand when we have the deputy minister and the ministry in to explain what happened in the auditor's report.

I think, Laurel, you have a motion?

**Ms Laurel C. Broten (Etobicoke-Lakeshore):** Yes, I'd like to move the subcommittee report.

The subcommittee on committee business met on Wednesday, December 17, 2003, and recommends the following:

That the selections for consideration by the committee from the 2003 Provincial Auditor's annual report be as follows:

Section 3.01: Court services—Ministry of the Attorney General;

Section 3.02: Children's mental health services—Ministry of Community, Family and Children's Services;

Section 3.03: Family Responsibility Office—Ministry of Community, Family and Children's Services;

Section 3.04: Policy and consumer protection services division—Ministry of Consumer and Business Services;

Section 3.05: Curriculum development and implementation—Ministry of Education;

Section 3.07: Science and technology—Ministry of Enterprise, Opportunity and Innovation;

Section 3.08: Environment—Ministry of the Environment;

Section 4.08: Gasoline, fuel and tobacco taxes—Ministry of Finance;

Section 4.09: Drug programs activity—Ministry of Health and Long-Term Care;

That the committee will begin each section with a closed-session briefing by the Provincial Auditor and research officer;

That the deputy minister and other appropriate staff of each ministry will be asked to attend the committee,

following the closed-session briefing, to provide a response to the auditor's report;

That, upon authorization by the House to hold meetings during the recess, the committee will meet February 9 to 12, 2004, February 16 to 19, 2004, and February 24, 2004.

**The Chair:** Any discussion at all?

*Laughter.*

**The Chair:** I wonder what they're debating.

As Chair, maybe I'm going to have my prerogative and turn off the TV.

Is there any discussion on this? These were the choices that the three parties made during our meeting. It was agreed to by all three parties.

**Ms Broten:** Mr Chair, on section 3.02 and section 3.03, I guess we will really be calling the current Ministry of Community and Social Services, given that Children's Services are moving out; the proper name would now be Community and Social Services.

**The Chair:** Laurel, you're moving that, are you?

**Ms Broten:** Yes.

**The Chair:** Is there any opposition? Will we carry that then.

The plan, in terms of the practicality of the meetings, is that we're planning to meet at 10 o'clock in the morning to start the meeting. We'll have a half-hour briefing by the auditor and then we'll call the ministry to be here. Normally the deputy shows up. They consider this a very serious process, so they will be here and they will be explaining what they've done to remedy the criticism in the auditor's report. Hopefully, at around noon we will break for lunch. Then we will come back in the afternoon. We will extend it, if there are still additional questions we want to ask of the particular ministry. If not, we will then talk with Ray and the other people involved in the research and discuss what kind of recommendations the committee might want to work around, what our summary of the particular meeting might be, and then, I'm told in previous years, normally we adjourn around 3 o'clock in the afternoon. That's the normal day here.

On Thursdays, we will probably be discussing—as you can see on the motion that has been put in front of you, there's a motion for sections 4.08 and 4.09. These are "report backs" so that they are on previous auditors' reports that they're reporting back. They tend to be shorter in duration. The hearings and explanations tend to be more clean-cut because they are older in nature. We will be putting those on the two Thursdays, so we'll start at 10 on Thursdays. The plan is to have lunch either in an adjacent room or close to here, where we may be able to talk with the researchers about what we want to do out of that. So hopefully we can be out of here a little bit earlier than 3 o'clock on Thursday afternoons so you can go back to your constituencies a little bit earlier than normal.

That's sort of the way we envisage it happening. We could postpone the starting time on Monday if that is the desire of the committee. But all that does is sort of shove the day back and make it more awkward to work around.

We'll head toward the 9th at 10 am as our next meeting. Any questions or comments?

**Ms Broten:** Sure, I just wanted to speak to the motion. I have spoken with the House leader and I understand that the motion today will be to allow the committee to sit in the recess, but they won't be making reference to a number of days, so as to leave it absolutely open-ended for us.

**The Chair:** Yes. It's the committee that basically makes that decision. If we get into this and it goes shorter, we can shorten it. If it's tending to stretch out, we can stretch it out, but we would be limited to 12 sittings days or whatever the motion says, so the limit is the upper end.

Does anyone have any objection to asking for the time, the 12 days? I'm told that technically we should ask the House leader. We should have that from the committee.

1020

**Clerk of the Committee (Ms Anne Stokes):** Normally the committee makes a motion and then the House leaders would confer and then grant the time. This way we can work—

**Mr David Zimmer (Willowdale):** So are we going to ask the House leader?

**The Chair:** We've already done that informally. We had to do it because of the timing.

**Mr Zimmer:** And informally he said it's a go?

**The Chair:** Yes.

Any other questions? Feel free to phone the researchers or the research officers leading up to this, if you need any information or whatever. I look forward to some good hearings in February.

**Mrs Sandals:** Just one question: Will we get a schedule, then, of which ministry is which day, which section is which day?

**The Chair:** Yes.

**Mrs Sandals:** So as the time approaches, we'll—

**The Chair:** Because we only decided this yesterday, we'll try to accommodate, as much as we possibly can, the deputy ministers.

OK, thank you very much.

Jim, do you want to do an overview of how we're going to operate?

**Mr Jim McCarter:** We could give you an outline, too, of the type of material that we give you in preparation for the meeting and what the report is, if you'd like, for the new members. Would that be helpful for the new members?

**Ms Broten:** Sure.

**Mr McCarter:** I'll hand this off to Ray in a second, but what we typically do is, we work with research before every meeting and try to put together a fairly short briefing document for you—we try to keep it to 10 pages—which summarizes the material. On that particular section of the auditor's report, it highlights what the issues are, what the recommendation was, what the ministry's response was. Probably most importantly for each section, we do suggest a number of questions that you may want to use to ask the deputy—and typically it's

the deputy. Usually the assistant deputy minister comes and usually the program director comes, and often they'll bring three or four staff, sometimes as many as 10 or 20 staff, but usually they bring five or six staff. But we try to give you this.

What we do from sort of 10 to 10:30 is Ray and I will walk you through this document, try to give you an overview of what the major issues are and maybe from the auditor's perspective, if we have whatever, 10 recommendations, we may say from our point of view probably these three or four are the really big issues that you may want to focus on. But it's totally up to you. You may want to focus your questions on this. This is on corp tax. There may be other areas that—you know, you're aware of issues just from your constituents that you may want to bring up. It's fairly open-ended. What we try to do is give you something to work with.

Then the questions go—and you may want to jump in—and then typically the committee would prepare a report like this that would be tabled in the House, and the committee would generally have a number of recommendations that they might make in addition to the auditor's report. Often in the front of this report there would be a statement that the committee endorses the auditor's recommendation and encourages the ministry to take action, but very often the committee will come up with some good, pragmatic recommendations.

This is issued and then I think the ministry gets either 90 or 120 days to respond back to the public accounts committee recommendations and then they would issue—here's an example from Bob Christie, the deputy minister. He would come back—and it's usually fairly detailed. Deputies come back then and say, "OK, here's the action that we have taken and here's what we plan on taking to address the committee's recommendations."

That is the full accountability route. From our perspective, having these discussions with the deputies is very helpful. It certainly encourages them to act on our recommendations.

Ray, do you want to add anything?

**Mr Ray McLellan:** Following up on Mr McCarter's comments, earlier on I think Laurel had asked about questions. These questions—in the case of corporations tax, I think we're looking at about 10 pages. Essentially what happens is, it's really me sitting down and reading through the report and really identifying concerns that are glaring or where the ministry hasn't responded to the specific audit points, so they're very obvious points of concern. As Jim just said, we discuss this back and forth so that we've got a package that clearly captures his concerns as well as my concerns with respect to the auditor's report and the ministry's response to it.

What I would say, though, is that over the years the various caucuses would take this report and go off and pick their approach to it, so obviously you're not going to be locked into what these questions are. At times members use them, and I'd say probably 60% of the time they don't use them. They may read them and say, "That's a point of interest, but I'd like to embellish on it in the

following way." So you're obviously not locked into these questions; they are little more than suggestions. I think it probably gives you a steering point, a takeoff point for where you want to go, so I think it's useful in that respect.

In addition to these possible questions, in the case of corporations tax, for which the report was tabled in June 2003, additional material was provided to this committee. Clearly, a copy of the audit report would be in there; parts from the public accounts 2001-02, because you want to refer to those numbers and figures; there might be press articles; Hansard excerpts from the House when this was being discussed over the last couple of years, so you can go back to see what the issues are—so that's certainly of assistance; parts from the estimates briefing—I don't know if you've spent much time looking at them, but they're useful in terms of laying out on a program-by-program, line-by-line basis exactly what the various ministers are up to, so that's useful material; also we've included, in recent years, parts from the ministries' business plans—that's worth having a look at, it's a starting point and I think it collects a lot of information together; and lastly, some information from the ministry's Web site on corporation tax, for example, the components of Ontario corporate taxes, non-compliance and collections. So there's enough information to get you started. If you want, as the Chair just said, you can certainly come back to us and say, "It's fine, but I really want to pursue this aspect of corporation tax." That's an open-ended process.

The other thing we do is follow up. For example when we were looking at corp tax last year, the government released a news release on February 10, 2003, by the previous government with respect to tougher tax collection measures. So when there is follow-up from the ministry following the release of the auditor's report, we'll certainly make sure you get that material, if it's a press release or a statement in the House. When the deputy, Mr Christie, is before this committee, it's typical for the deputy to start off and probably spend 15 minutes on an opening statement. So that basically sets the groundwork of what has happened, and at times they'll just run through the auditor's recommendations 1 through 12 and say, "We've taken the following action." They may provide a document like this for the committee, so you'll have something to refer to when you're following up on your questions. That's quite typical as well.

The other thing I would say is that during the hearings the ministry is never able to answer all of your questions, but what we do is to make sure we've got a running list of what we've asked them. In this case, we asked the minister to get back with a response to eight or nine or 10 questions with respect to corp tax. This information is critical to go into your report, and you may give legislative research instructions and say, "I want you to deal with (a), (b) and (c) in these follow-up questions." You may disregard some of them; that's your call. So that's supplementary information will come in. It's important to ask them—for example, during the hearings if you can see that they're not able to deal with questions or

material hasn't been presented—"I'd like the ministry to provide the following information with respect to corporate tax between 1995 and 2000." You can do that. You can have a list of questions you're interested in.

As far as the actual committee report, as Mr McCarter had said, this is what the final product looks like. It will come to you from legislative research as a draft document, a confidential document for committee purposes. But as I think I said at an earlier meeting, prior to us actually sitting down and going through this report, this will have gone through the Provincial Auditor's office, so you have the confidence and assurance that what's in this draft report has gone through Jim McCarter's office, through his director's office responsible for corporations, so we have a level of confidence that what's in here makes sense from an audit perspective as well as from obviously the hearings, because I've had a look at Hansard. As Jim also said, following the tabling of this document in the House, within 120 calendar days we have a response.

1030

The only criticism that I would make, and concern that I would voice about the process is—and John Gerretsen, when he was on the committee over the last five years had raised this point on numerous occasions—we get the response on a line-by-line basis to our report. For example, they deal with recommendation 3 and what the ministry has done, so that the closure on the accountability is very good as far as I'm concerned.

The hole in the whole process is that as a committee we never have the time to finally get back to this 120-day response. Time runs out on us. As I think the clerk said a few days ago, we never get to the point, in probably 90% of the years, of actually finishing off all of our reports. Time passes us by. This is the weakness.

The positive part of it is that the Provincial Auditor, when he does his chapter 4 follow-ups in two years, 24 months from finishing the hearings, would have a look at this as well as having a look at our report and recommendations and incorporate that into chapter 4. But as a committee, we never really get back to do this. Whether or not that's terribly important is up to the committee to decide, but it's something that over the years I've had a concern about. Anyway, we'll leave that with you and you can decide where you want to go on that.

**Mr McCarter:** If I could just add to that, when we go in to do our next auditing program area, if Bob Christie has said, "We've taken this action," and they haven't, we point that out very clearly in the report, that when the ministry came back in response to the public accounts committee they said they were going to do this and it was not done. We make sure that we do follow up the next time we do the audit.

The other thing that I'll mention, just for your interest, is that it's helpful to Ray that—when we finish the hearing, often it's good to have a bit of a discussion in the committee to provide some feedback with respect to helping him draft the report: What type of recommendations do you want to make? I should say, I know Ray

mentioned that the draft report goes back to us. I do want to make it clear, though, that it's your report, it's your recommendations.

We more or less check it for factual accuracy, but there could be a situation where we might make a recommendation, the ministry might agree, you might listen to the two points of view and at the end of the day your recommendation may be something different than what we've recommended. So be it. We're not approving or vetting your report in any way. It's your report; it's your recommendations. We check the facts and everything, but it's your report.

**Mr Zimmer:** Mr McLellan, if that's the flaw or your criticism, what would you recommend, or what are your thoughts on addressing that flaw so we can come back to it? Because that is obviously a key piece of the exercise.

**Mr McLellan:** In my view, the committee should, in the fall of the year—in other words by next fall, prior to the auditor's report coming out for 2004, it would be useful for us as a committee to look at those responses. In other words, even if it's the members taking the response away and looking at it and saying either, "Essentially we're happy with it," or, "We're not happy," they may want to do something in a supplementary way. I don't think it needs a lot of time, that part of the equation, but I think it needs some time for us, at least as a committee, to look at it and say, "Yes, we're happy with it," or, "No, I think a letter should go off to the ministry with respect to recommendation 8 on corporate tax, and ask them to move further in this direction," or maybe they're not moving fast enough. I think that would be helpful.

**Mr Zimmer:** Again—you'll have to help me with this—would it be appropriate to ask the subcommittee to address that issue of how we can come back to it, in that when the subcommittee is planning—

**The Chair:** We can look at it. It's pretty early in the process. I guess that decision would be in September, as to whether or not we could react or how we would react and that kind of thing. Anne, did you have something?

**Clerk of the Committee:** I just wanted to say that the committee at any time can review its progress and see how it's doing and you might want to move ahead with something or jump to something else. There's an opportunity at any time to do that, to make those decisions.

**Mr Bill Mauro (Thunder Bay-Atikokan):** I'm just wondering—you mentioned about the briefing document, that it's confidential. Will that document be Purolated to the constituency offices out of town, or will it only stay here? I know in one of the other committees there's a problem, or some reluctance, to Purolate out confidential documents. I'm just wondering if I'm going to have that when I'm in Thunder Bay or if I'm going to have to come to Toronto to access it.

**Clerk of the Committee:** My office does the distribution of the material. We would just check with you where you would prefer to get your material.

**Mr Mauro:** So there's no issue around sending it to—

**Clerk of the Committee:** Sometimes we are sending out information on a weekly basis. Then, depending on

what your schedule is, you may prefer to have it that week, in your Queen's Park office or—

**Mr Mauro:** Perfect.

One other question: Historically, has there been any legislation referred to this committee or has it always just simply to review the—

**The Chair:** There has been, from time to time, but there's none now.

**Mr Mauro:** None now, but that still can change?

**The Chair:** It can always happen to any committee of the Legislature. The House can basically decide on that.

**Mr Mauro:** The third and last question for me: I see that we are scheduled to do two weeks, the 9th to the 12th, the 24th. I'm just wondering if the committee is open to the suggestion of perhaps seeing how it evolves in that second week and having a determination made as to whether we are getting close to the end of the work, and rather than coming back that week for one day, trying to fit it into the previous week?

**The Chair:** The reason I recommended the schedule as it is is that on the Monday the 23rd we have the Ontario Good Roads Association convention here in Toronto. You may want to be here for that anyway. The idea was that when we were going to have a short week, maybe one day or whatever, you might want to be in town anyway for that other function. It may not be a problem. We can try to work it through as we get into that second week as to what's happening with regard to the overall schedule.

**Mr Mauro:** Then the AGM for us is the 20th in Windsor.

**Ms Broten:** Yes. So that's why we didn't want to be sitting the Monday, because there's an expectation among some folks that we'll be booking meetings in that area on the Monday.

**Mr Mauro:** So the only other thing would be perhaps if we sat longer the first week, then that would perhaps get around it. Anyway, it's just something that maybe we can keep in mind.

**The Chair:** We can't shift meetings unless we have proper notification, because the people we are asking here have busy schedules as well. But we'll try to work through that and see how it's coming.

**Clerk of the Committee:** If I can just add to that, we normally schedule one section per day, so it's one deputy minister per day. If we shortened up, it would be a matter of changing all of their schedules as well. It can be done, and it does happen, where the committee decides that they would like to reschedule something. It certainly has been done, but I would start contacting them now to set up those dates.

**The Chair:** Can I ask a question here? In spite of the fact that I've been around here a long time, I've never actually sat on this committee during its deliberations. One thing I have always stood for—and I actually remember one committee some time ago where a Chair or a committee tried to quieten a member as to what he was going to say or wasn't going to say. Of course it's just wrong. Each of us has the right to say whatever we want,

but there is a good chance there will be a fair bit of press. It's a slow time of the year, there may be not a lot going on, so the press is going to be here. What are the options in terms of members and how they respond to press with regard to matters that might be raised at the committee? My concern always is when we're talking about deputy ministers and those kind of people. Everybody has to work with these people. There is an ongoing relationship that everybody has with them whether you're in opposition or in government. I'm not saying to any member that you can't go out and say whatever you want to say, but what are the options that normally would be put in front of a member when he or she is confronted with that microphone when they walk out there?

**Clerk of the Committee:** The auditor's report, of course, is a public document. When we conduct the public hearings, they are public, so they are open, so anything that is discussed at that time is a matter of public record anyway. Generally, before each briefing by the deputy ministers, the Provincial Auditor will provide a half-hour briefing that we do in a closed session. Generally, the report writing itself, which we would start once the House comes back in March, is done in closed session as well. It's done in closed session because the permits for the kind of full and frank discussion of some perhaps sensitive or touchy issues that you may not want to engage in in public. The report itself is kept confidential until it's actually adopted and tabled in the House.

In that respect, anything that any member would want to discuss with the press—of course they are free to discuss whatever they wish with the press. Certainly anything that has been raised in public would be open for discussion, but we would ask that anything that has been discussed in closed session or to do with the report the committee is preparing would be kept confidential because it can change. You might be making announcements about something and the committee may decide at a later date that something new has come up and they may decide to change those recommendations or they may change the focus of the report. It serves most purposes well to keep it confidential.

But other than that, there's certainly no restriction. Certain members would have perhaps more of an interest in certain topics than in others, so they may wish to pursue a line with the press or the press may go after somebody who's *[Inaudible]*. The only restriction would be just as you would normally have with any matter that you would deal with anyway, that I can see.

Do you have anything to add, Jim?

**Mr McCarter:** No. It will depend on the topic, but most of the stuff in the auditor's report is public. It depends on the topic whether they come or not. Recently in the past there haven't been that many media at the committee meetings. You're right that it's a slow time where they may be looking for something.

**The Chair:** Any other business? We'll see you here in February. Thanks very much.

*The committee adjourned at 1042.*

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Mr Norman W. Sterling (Lanark-Carleton PC)

#### **Vice-Chair / Vice-Présidente**

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Ms Laurel C. Broten (Etobicoke-Lakeshore L)

Mr Jim Flaherty (Whitby-Ajax PC)

Mr Peter Fonseca (Mississauga East / -Est L)

Ms Shelley Martel (Nickel Belt ND)

Mr Bill Mauro (Thunder Bay-Atikokan L)

Mrs Julia Munro (York North / -Nord PC)

Mrs Liz Sandals (Guelph-Wellington L)

Ms Monique Smith (Nipissing L)

Mr Norman W. Sterling (Lanark-Carleton PC)

Mr David Zimmer (Willowdale L)

#### **Substitutions / Membres remplaçants**

Mr Mario Sergio (York West / -Ouest L)

Mr John Yakabuski (Renfrew-Nipissing-Pembroke PC)

#### **Also taking part / Autres participants et participantes**

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#### **Clerk / Greffière**

Ms Anne Stokes

#### **Staff / Personnel**

Mr Jim McLellan, research officer, Research and Information Services



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## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 9 February 2004

# Journal des débats (Hansard)

Lundi 9 février 2004

**Standing committee on  
public accounts**

2003 Annual Report,  
Provincial Auditor:  
Ministry of the Attorney General

**Comité permanent des  
comptes publics**

Rapport annuel 2003  
Vérificateur provincial :  
Ministère du procureur général



Chair: Norman W. Sterling  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Monday 9 February 2004

Lundi 9 février 2004

*The committee met at 1049 in committee room 1, following a closed session.*

2003 ANNUAL REPORT,  
PROVINCIAL AUDITOR  
MINISTRY OF THE ATTORNEY GENERAL

Consideration of section 3.01, court services.

**The Chair (Mr Norman W. Sterling):** Good morning. My name is Norm Sterling. I'm the Chair of the public accounts committee. I'd like to welcome Murray Segal, the deputy minister of the Attorney General. Also we have Jim McCarter, the acting Provincial Auditor with us, along with some of his staff. I'll ask you, Deputy, to introduce the people you have with you, and invite any opening comments you might have.

**Mr Murray Segal:** Thank you, Mr Chair and members. My name is Murray Segal. I am the acting Deputy Attorney General. I'm pleased to be here today. I welcome the opportunity to discuss with you the recommendations of the Provincial Auditor. I would like to take the opportunity, Mr Chair, to acknowledge you because, while at the helm of the Ministry of the Attorney General, you, as all Attorneys General, have faced the very issues that I will be addressing today. You are very familiar with those issues and the complexities of the justice system and the challenges inherent in ensuring the timely administration of justice.

Joining me today is the assistant Deputy Attorney General, court services, Debra Paulseth; assistant Deputy Attorney General, corporate services management division, Stephen Rhodes; and John McMahon, director of crown operations, Toronto region. They're here, of course, to provide more detailed information as necessary.

I'd like to start off by giving you a brief overview of how the justice system is administered in this province and to provide some background with respect to the comments I'm about to make. I'd like to review some of the key points in the Provincial Auditor's report, including case backlog, court administration and information technology, and what the ministry is doing to address these important issues.

By way of overview, the ministry's court services division and the judiciary are together responsible for administration in the courts. The ministry provides a wide range of justice services, and the judiciary manages

certain aspects of the administration of those services, including scheduling and assigning of judges and justices of the peace. The relationship between the ministry and the judiciary is unique. The relationship is interdependent, yet independent of one another. As we are all aware, judicial independence is a fundamental principle of the legal system and is constitutionally guaranteed.

The justice system is affected by a number of other players who are, and must be, independent of the ministry: police, lawyers, Legal Aid Ontario, children's aid societies, and civil and family litigation plaintiffs, to name some. All of these players have a significant role in the administration of justice. They have a significant impact on the demand on the system, an impact that the ministry cannot entirely control.

Our court system in this province is the largest and busiest in Canada. Ontario courts hear over half a million criminal charges each year and about 270,000 civil and family cases. Court services are delivered by over 3,000 court staff, and judicial services are provided by more than 1,000 judicial officers at several levels of court. The ministry accommodates these services in over 250 locations throughout the province, occupying in excess of five million square feet of space.

The courts are closely linked to other parts of the justice system, including prosecutors, victim services, police and correctional services. The issues covered in the Provincial Auditor's report are also closely linked; one cannot look at one area without examining the others.

I would like to begin with backlog. So what is backlog? First, I want to clarify what is meant by that word. In 1990, the Supreme Court of Canada released a decision called Askov. The court held that any person charged with an offence has the right to be tried within a reasonable time. That decision was anchored on clause 11(b) of the Charter of Rights and Freedoms. It set out that most cases should be tried within eight months of the trial date being set. After some difficult days between October 1990 and September 1991, when over 47,000 charges were stayed or withdrawn, the court clarified that the eight-month marker is only a guideline, and just because a charge has been in the system for eight months does not mean, in and of itself, that it is in danger of being stayed, withdrawn or dismissed.

To illustrate: In fiscal year 2002-03, the Ontario Court of Justice received 585,000 adult criminal charges. By October 2003, 86,000 charges had been in the system for

over eight months. Yet fewer than 40 cases had been dismissed due to unreasonable delay as a result of a defence application to stay, arising out of purely systemic delay.

All cases require a certain amount of time during which things get settled out. We call it an intake period. That's where preliminary matters such as retaining counsel directly or through legal aid, receiving disclosure of the case to be met, and pre-trial discussions between counsel and the court are dealt with. The time required for this intake period will vary, depending on many factors including, and especially, the complexity of the charges. So at any given time there will be a significant inventory of charges in the system that are not in danger of being stayed.

Regarding the causes of delay, in the Askov case the Supreme Court of Canada made it clear that the delay must be unreasonable and must be largely attributable to the crown. Factors that the court considers when deciding this include: the explanation for the delay; whether or not the accused has waived or caused any of the delay; whether or not the accused has suffered prejudice as a result of the delay; whether or not actions of the crown or the accused have led to the delay; and, of course, society's interest in the charges going ahead. The court must balance these and other factors, and each case must be decided on its own merits.

The courts have reinforced that criminal matters must be dealt with within a reasonable time frame. We are vigilant, and we must remain vigilant to ensure we are doing everything we can so that cases are heard on their merits. Delay is an issue. We must address it, and we are addressing it.

However, the causes of delay are varied, complex and interrelated. Trials are becoming longer and legally more complex, due in part to a substantial increase in the number of charter motions brought by the defence, particularly in the areas of impaired driving and sexual assault, but not restricted to those areas. Some government policies and legislative initiatives and police actions and prosecution policies result in additional court time. For example, additional victim supports and a focus on domestic violence are well-placed concerns, and they too may factor into increased court time.

The number of charges received in various court locations has also increased for many reasons. In general, the hiring of more front-line police officers has a tendency to increase the number of charges coming into the system. This would particularly be true in the greater Toronto area, where the ever-growing population has increased pressure on the justice system. The Criminal Code and the Youth Criminal Justice Act are pieces of federal legislation and beyond provincial jurisdiction. Creation of new offences and changes to criminal procedure can also lead to pressures on the system. The reclassification of many offences in the Criminal Code permitting the crown to decide to have these offences dealt with in the Ontario court rather than the superior court may cause further pressure on the lower court.

Although the Ontario court did hear preliminary hearings for the superior court matters before, and still does to some extent, preliminary inquiries tend to be shorter in length and therefore do not consume as much as trial time.

I do acknowledge as well that the average number of court appearances per charge has increased, and we are looking at that as well.

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As this illustrates only briefly, the court system is demand-driven and it is impacted by a large number of factors beyond the absolute control of the ministry. However, we are taking many steps to address the issue of timely administration of justice. In co-operation with the judiciary, we have set up mobile blitz courts. Additional judges and crown attorneys and court staff are assigned to sites with the greatest number of criminal charges and go into those sites for periods of three or six months, providing a flexible response in our areas of greatest need. For example, blitz courts are planned for Barrie and Milton starting in April, and recent blitz courts were located in Ottawa and Brampton. We meet regularly with the judiciary to have appropriate administrative discussions so that we can keep an eye on emerging trends and try to stay ahead of potential difficulties.

We have implemented first appearance disclosure, meaning giving the accused's counsel the necessary material to defend the case as soon as is practicable after the charges have been laid.

We have been pressing and moving ahead on early pre-trial conferences between crown counsel and the defence to review issues and come to agreement, as appropriate, as soon as possible. We want to cut down on both the number of cases being tried and the number of issues that are outstanding and therefore cut down on the number of hours required for cases to be dealt with.

We hope to explore the possibility of expanding diversion for adult and youth matters.

What about our work in particular with the judiciary? In his report, the auditor recommended that the ministry work with the judiciary and other stakeholders to develop more successful solutions to eliminate backlog. We have undertaken a number of co-operative initiatives.

First, a coordinated delay reduction initiative has recently been launched and will direct additional resources to criminal courts in areas where the delay is greatest, mostly larger urban areas. Under this initiative, the Attorney General has appointed 17 judges, comprised of seven replacement judges and 10 new judges, including two judges in Brampton, one of the busiest courts in the province. We expect and anticipate another five judges will be appointed by the end of March.

Along with those particular judicial placements, the ministry has also recently hired 26 crown attorneys, with another 13 to be hired in April, 31 case management coordinators, and 38 additional staff to support court operations and to assist victims. As part of that initiative, additional annual funding in excess of \$600,000 has been

provided to Legal Aid Ontario to hire an additional nine duty counsel.

In 2002 and 2003 the ministry hosted two justice summits specifically to address growing backlogs. The concept was simple and practical, yet unprecedented. Never before had all the major players in the justice system come together to look at the problem of backlog, to analyze and better understand the causes and to seek, together, innovative solutions. These summits, with input from the judiciary, the bar, the ministry, Legal Aid Ontario, children's aid societies and other ministries and agencies, have resulted in two critical pieces of work.

First, a bail and remand best-practices protocol is aimed at reducing the number of remands required before a bail hearing is held. This, in turn, helps to reduce backlog. It is currently being implemented across the province.

Second, a case management protocol will provide for a more efficient case management system to facilitate the movement of cases through the courts. It's being targeted for implementation across the province starting this spring and aims at such issues as better scheduling, meaningful appearances, timely disclosure and the like. As well, we are working on a third justice summit this spring, where next steps will be determined.

I'd like to now turn to courts administration, because in the area of general courts administration, the auditor recommended that the ministry and judiciary work together to ensure that the justice system functions effectively and efficiently by improving administrative and management procedures, specifically by establishing a process of greater co-operation in decision-making in a stronger structure of courts administration.

The court services division works closely with the judiciary in the daily administration of the courts. The division has made particular efforts over the last three years to involve the judiciary more actively in the planning and management of the courts. Representatives of the judiciary now participate in the division senior management committee and in other committees dealing with financial management, court facilities and court technology. This has led to better judicial understanding of ministry goals and policies, and a stronger voice for the judiciary in ministry activities affecting the courts.

In a speech last month at the annual opening of courts, the Attorney General stated he would re-examine courts administration to give judges a greater role in the administration of the courts. The ministry is examining options for a new governing structure for courts administration, and we expect that we will be in consultation with the judiciary in the near future.

I'd like to turn to information technology. Information technology is a common thread in all our court initiatives and a key component of any plan to improve services and reduce delay. Effective case tracking systems are essential to understanding how cases progress through the courts and for managing caseload.

The auditor recommended creating better tools to identify the sources and specific reasons for delay so that

action can be taken to address potential problems in a timely manner. He also recommended that the ministry take the necessary steps to upgrade the information technologies used in the courts. The ministry has made significant progress in this regard.

We have developed a new case management system, called Frank, for all civil, family, small claims, divisional court cases and superior court criminal cases. Implementation is underway across the province.

Before Frank, these courts relied on statistics collected manually by court staff to track the flow of cases. This new system will provide better information on how the system is working. For example, it will track times for trial and other hearings, which will help us determine the best ways to improve it.

We've also begun work to improve the existing criminal case tracking system, ICON, for the high-volume courts in the Ontario Court of Justice. A recent review recommended that the system be overhauled and upgraded, and we're in the process of doing that right now. These upgrades will improve the quality and scope of the information provided by the system.

We continue to evaluate e-filing in the Toronto small claims court. This technology allows parties to file documents electronically 24/7. We're also continuing to use our model electronic courtroom, set up here in Toronto, which tests the use of in-court technology in commercial and non-jury civil matters.

Some examples of this technology include digital evidence and argument presentation, remote video and teleconference appearances and simultaneous cross-border hearings. The video remand project is in its third year and, as of today, 124 installations have been completed in courthouses, correctional facilities and police detachments across the province.

The video remand system allows accused persons to appear in court by videoconferencing from a police station or correctional facility, reducing the number of prisoners who need to be transported to courts and held in holding cells, enhancing public safety and resulting in cost savings for police services.

We've also developed a multi-year strategic information management and IT plan to define priorities and identify resource requirements. Improving the technology in courts will not only assist us in addressing issues such as backlog, but will enable us to better serve the public and deliver our court core businesses.

#### 1110

With respect to statistics and performance reporting, the auditor recommends that the ministry measure and regularly report on cost-effectiveness, efficiency and performance of the court services it provides. We agree, and the court services division has taken several steps to improve the way it measures its achievements and activities. Better case-tracking systems mean better statistical reports, which in turn result in better performance reporting.

We will be able to better understand, evaluate and improve the performance of the courts by refining our collection of data. We've been working to develop new

statistical reports to provide for more detailed and reliable analysis. Improved reporting and analysis of court caseloads and case flow will allow us to assess resource needs more accurately.

We've also developed new standard financial reporting tools to capture court costs by case type, which will also help direct resources where they're needed the most. These financial tools will be fully implemented by April 1.

In addition, the court services division has developed a five-year strategic plan that establishes 42 service standards, business goals and multi-year priorities for the courts. This plan, which will be updated annually, was developed with the help of the judiciary and in consultation with the bar. It's included in the division's recently released annual report for 2002-03 and is part of the division's ongoing commitment to improve the accuracy, scope and accessibility of information on the division and on the operation of Ontario courts.

The Ministry of the Attorney General faces unique challenges in our delivery of efficient, effective justice services. The components of the justice system are all interdependent, and improvements in one area weave through all areas. We share the auditor's concerns about court delay and the administration of the courts. Over the past months we have taken significant action on a variety of fronts, and we are continually evaluating and updating our way of doing business, to ensure that we respond to the changing needs of the justice system. We are always exploring ways to improve what we do.

I thank you for your time, and I welcome any questions or comments you may have.

**The Chair:** Thank you very much, Deputy. We appreciate your remarks this morning. Just before going to questions, can I ask for one clarification in terms of the overall numbers? You said you were hearing 270,000 cases a year; I believe that was the number you used. How do you relate that to the 550,000-odd charges that are in the auditor's report and the 100,000 charges that have not been heard? Can you jig those two numbers for us?

**Mr Segal:** As I recall, what I indicated was that there were in excess of 500,000 criminal charges that the system confronted. The point I was trying to make was that ours is a multi-faceted system. While the auditor properly paid some attention to criminal, there are as well non-criminal cases that take a lot of resources in the court system—civil, family and small claims—and my reference to the second set of numbers, 270,000, was in relation to the non-criminal business.

In addition, when we speak of criminal inventory or backlog, as I recall, there was a focus by the auditor on the number of cases or charges in the system out of the half a million-plus that were considered to be in a backlog state as defined by the auditor, and they approached in the neighbourhood of 89,000. I hope that serves to clarify my remarks on statistics.

**Mr Peter Kormos (Niagara Centre):** Further to that question of 500,000 criminal charges, how many accused? How many individuals?

**Mr Segal:** As I recall, it's in excess of 200,000 cases involving in excess of 500,000 charges. Now, some of them—you could have people getting in trouble a number of times throughout the year. We have some people who unfortunately come back, who are repeat customers, but it's over 500,000 charges and over 200,000 criminal cases.

**The Chair:** I think perhaps if we start with the backlog situation and try to focus questions there. I don't want to limit any member from going to other subjects, but maybe if we try to go through the backlog, the courts administration and the information technology, in that order, it might provide a better question and response kind of thing that we can focus on.

Laurel, do you have a question?

**Ms Laurel C. Broten (Etobicoke-Lakeshore):** Yes, I do. I want to ask a bit about the issue of the backlog. I appreciate the efforts that you've indicated are being made in respect of the backlog. I think certainly from all of us who are looking at what has happened, it causes us some concern that we've seen the backlog increase year over year. Whether my information is right or not, it looks like an accumulation of 7,000, 8,000, 10,000 each year, over the last five or six years. I guess the starting point is, we're talking about dealing with this now, but the backlog issue was raised and highlighted in 1997. From 1997 on, how did we continue to see an increase of 10,000 year over year? Where does that come from, and why has it taken us until this point in time to be seriously talking about the issue of the backlog?

**Mr Segal:** The issue of the backlog, as I've tried to indicate, is a complex one involving the interrelationship of a number of factors. Let me highlight a couple that might serve to shed some light, I hope, on why the increase. I can say that this is something that the ministry, year after year, tries to grapple with, in new and innovative ways, with the judiciary and other partners.

For example, in the last few years the number of criminal charges in the system has increased by 13%. That's something that is out of our control. Ours is a demand-driven system. If charges increase or the amount of crime increases or the amount of funding for police increases, which may be entirely appropriate, then we're going to see that in our system and we have to work more smartly.

Some of the answer, as we've seen and as I've remarked upon, includes addressing the issue of some additional resources, but at the same time we all have to work more smartly. Some years ago we did not have the concept of mobile or blitz courts. Now we have a significant and strong relationship with the judiciary, where, in a regular and periodic way, among all the other tools and re-engineering we're trying to engage, we address areas that are falling behind.

For example, in relation to the 13% charges, it has been remarked, including in the media somewhat recently, that the number of charges coming into the system in Brampton has, over the last three or four years, increased by 59%. That requires everyone being on their

toes, working very well with each other, seeking innovative answers and the like.

I've also touched on the issue of the increasing complexity of cases and as well new pieces of federal legislation, which may present greater challenges in terms of balancing of rights and therefore the complexity of those cases.

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**Ms Broten:** Just one follow-up question. The issue with respect to not being able to control all aspects of the system is certainly understood. As the police have additional resources to lay charges, you're going to be responding to more charges. But as someone who has functioned in the court system, we do control to an extent the ability for those who want to delay to use the system to be able to effect those purposes, in terms of the number of appearances, for example.

I'm wondering whether or not lack of information, at times, for the judiciary or the court administrators allows that to happen. You see the same folks over and over again. They just want to not move forward with their case, but put it back and I'll come back another day. Yet not everyone in the system knows that information, and it allows folks to abuse the system to some extent.

**Mr Segal:** That's a very interesting question. I think that one of the things that we've recently started addressing is the issue that you touched upon, which is, what are the reasons for the delay? Do we have an ability to track the reasons for delay? For example, some have said that people are languishing with respect to getting bail. What we've decided to do, and we recently did, is look at the reasons for delay, who's asking for the delay and that sort of thing. We've done that as a spot check in the bail area to see whether some of these points of view are truly fact or myth.

But what we've decided is to do a project where we improve the ICON system to track the reasons for adjournments, what's placed on the record. We're moving to do this as of this spring. I think it will give us a lot of data. Our goal is to have, as I touched upon in my opening remarks, meaningful appearances. No one wants to see appearances that are wasted. It doesn't do a lot for the administration of justice. Sometimes there are very good reasons, but we want to make sure they're always good reasons, subject to the independence of the judiciary.

**Mrs Julia Munro (York North):** On the question of the backlog—and I appreciate in your comments that you've referenced the fact there are a certain number of factors over which you have no control—I wondered whether or not you have given any consideration or there have been any pilots that would look at a more flexible court time, and whether that would use the facility in a way that would, in some way, address the issue around the backlogs?

**Mr Segal:** Yes, Mrs Munro. I think that what we are trying to do is ensure that the court facility during court hours is used as efficiently as possible. In other words, there is no down time, that there are methods whereby if

a case collapses—we are, after all, dealing with the human spirit. So if an accused decided, and even surprised their own defence counsel at the last minute, to plead guilty, then we would have something to fill that gap.

The issue of meaningful appearances and using court time is something that we have a working group looking at and is something that we take very seriously. When one gets into issues such as, for example—I'm not sure if you were thinking about this, Mrs Munro—night court and the like, it becomes a little difficult because our whole system is geared to one shift. I only work so many hours in a day; sometimes they seem very long. You only work so many hours in a day. There are collective agreements. The jails staff in a certain way—duty counsel and the like. The key is to get the best use of all of the hours that are available in a day, and we are taking those sorts of steps.

**Mrs Liz Sandals (Guelph-Wellington):** It seems, from what you're telling us, that the increase in the number of police officers is quite well documented; the increase in the number of charges is quite well documented. I take it that we have a huge remand population in the prisons, but again, we've built new jails, and that's quite well documented. So we seem historically to have the increase in the police, bigger jails, more charges. Has the increase in the number of crown attorneys and the number of judges kept up with the increase in all these other facets of the system which are feeding the courts?

**Mr Segal:** I think that over the years, Ms Sandals, on the issue of resources within the system—and I would include people working in corrections, victim/witness, legal aid and the like—we're doing a better and better job of keeping up. It's my understanding that Ontario is not the richest province in terms of ratio, but we certainly, by reason of our size, have the largest populations, for example, of crown attorneys and judiciary. And we continue to work smarter. It would be easy to say it's resources, resources, resources, and I don't think you're suggesting that, and I'm not either. So it's a balance between looking at the issue of resources, but most importantly, working more smartly and working together in bringing all the players together to make the maximum use of the resources available to us.

It's a fluid situation. We constantly have to be re-evaluating it. We do have to look at the issue, and history tells us that over the last 10 or 15 years since Askov. We have to keep going back and looking and checking in on the issue of resources. But I would not say that we've been—I think the system has been responsive to the appropriate identification of requests.

**Mr Kormos:** It's interesting: In your opening comments you said, "We want to cut down on the number of cases being tried." What does that mean?

**Mr Segal:** If we can bring the parties together, Mr Kormos, early on to get over any of the issues that might be an obstacle, get the parties talking earlier, to get disclosure to defence counsel earlier, to get realistic positions being taken by experienced crown attorneys early

on in the process, it may very well be that the number of cases to be tried could become more and more realistic. There will always be cases that have to be tried; that's our system, those are the protections and it's an accused's right to do that. But let's eliminate as much as possible those systemic obstacles, so that we're talking more.

**Mr Kormos:** You make reference to experienced crown attorneys. The corresponding role, of course, would be experienced defence counsel.

**Mr Segal:** It's always best to have experience. I think in our system—I'll speak only about the crown attorneys. I don't know if I want to be that presumptuous, especially with someone with your experience. In terms of sort of coming up with the correct positions, what we have learned in the crown attorney system is having some experienced people at the front end to make those decisions—the value of a pound of butter tends to work better. Now, we of course try to urge mentoring, and it's not possible in all circumstances. But it's a truism, generally speaking, that experienced people might be able to recognize earlier and be better able to communicate a position etc. We have a wonderful cadre of young people as well.

**Mr Kormos:** Competent and experienced. Obviously, I'm trying to get you to say something that I can pull out of the file folder six months from now when we're fighting for more funding for legal aid, for instance, making reference to the fact that we need capable crown attorneys. We also need capable defence counsel if your proposition that you just spoke to is going to work. Is that fair?

**Mr Segal:** I think that the defence counsel have a great tradition of helping each other, and the more complex the matter, the more one sees that experienced defence counsel or assigned mentor, younger defence counsel etc, and this is a system that promotes competence. We want competence on all sides of the equation. But I'm not here, and you're not asking me, to criticize.

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**Mr Kormos:** Over the course of the last decade of change, we've seen the formalization in the crown's office of charge, screening and basically a protocol and guidelines set for plea bargaining. Did you call it plea bargaining in your ministry: "plea bargaining"?

**Mr Segal:** Plea bargaining still exists, yes.

**Mr Kormos:** OK. First of all, has that been successful in terms of being adopted by crowns' offices across the province? Is there uniformity in application? I know there are volumes published by the ministry that are out in crown attorneys' offices. Has it been successful in terms of being universal and in terms of being applied evenly across the province?

Two, what are the goals, and have the goals been met? Are the goals set in terms of a goal of resolving, let's say, 20%, 30%, 40% of charges without trial, because you don't have to be a rocket scientist to realize that's part of the process of reducing the number of trials? So what

were the goals, have the goals been met and are they being met uniformly across the province?

**Mr Segal:** Your first question touches upon plea bargaining. Plea bargaining is an accepted part of the system as recognized by the Martin commission and subsequently by the Criminal Justice Review Committee. For some it has a certain connotation, but it's the way the system works. If it's practised responsibly, then it is a foundation piece for the system being able to account and handle the large caseload that we have been discussing.

Crown attorneys have a certain degree of independence. There are general guidelines that are administered through training sessions, summer schools and memoranda to assist them etc. But we do not have a system, as you well know, of cookie-cutter crowns and crowns' offices. What we're constantly trying to do is promote best practices and some degree of uniformity, but not an oppressing uniformity. Some degree of uniformity promotes fairness and predictability for accused persons and the defence counsel who represent them.

In terms of goals, over the years we've had a number of goals in relation to resolving our caseload in the criminal world. We've met those goals, and, for example, we try—and I believe you know this—less than 10% or 20% of our caseload. That doesn't sound like very much. But there are some very serious issues, accused persons who are properly invoking their constitutional rights, and they put the crown to proof. Ninety per cent of it gets resolved. The issue is resolving it in a fair and smart way without wasted appearances and the like, getting the people together and making sure that what's left has been boiled down as much as possible.

**Mr Kormos:** Thank you, sir.

**The Chair:** I have Mr Mauro, Mr McNeely and Mr Zimmer.

**Mr Bill Mauro (Thunder Bay-Atikokan):** Mr Segal, with respect, I was a little bit surprised at your response to Ms Sandals's question about human resources and that when we impact one section of the justice system, that being front-line police officers, we could anticipate an increase in criminal charges. I believe your response was something to the effect that we've been responsive, that we need to work smarter, and it's not just about human resources. Yet I'm not sure what that means. Does it mean that we have not been working smarter to this point? As the first question from Ms Broten indicated, we've seen an increase of 7,000 to 10,000 annually for the last five to six years, so I'm a little confused by your response. Does that mean we have not been working smarter to this point and we need to begin working smarter, or that we have tried putting more human resources at the problem and that has not led to a solution? I wonder if you could just clarify that for me a little bit.

**Mr Segal:** Sure. I'd be please to, Mr Mauro. I think one of the things I indicated, and I stand by everything I've said, is the fact that there are 13% more criminal charges in the system. That flows from police activity, not from crown activity, court services activity or judicial activity. It's just a fact.

It would be easy to just say, “OK, the police charges have gone up, therefore the answer is exclusively in our system asking for additional resources.” I think ours is a system where we have tried to be responsible and tried to work smartly, and we continue to try to do that.

I think that, as acknowledged by Chief Justice Lennox in the opening-of-court statement, all the answers are not known. This is a path of trying to do better, and we try to do that in a responsible way as it relates to resources, but also with all of the partners, including the police. So I think both of these things are going on simultaneously.

**Mr Mauro:** The only thing I would add is that a part of this growth in cases, though, has occurred going back many years before we saw an increase in the complement of front-line services, that being the number of police officers, which led to a number of charges. So clearly there are other variables at play that were leading to the backlog besides just the fact that at some point in the last two or three years we increased the number of officers. So I think there's more to it than simply that leading to charges. I'm still trying to find—if we go back to 1993 or 1997, when the auditor first made reference to these problems, that was before there was an increase in front-line policing. So something else is happening that hasn't been addressed.

**Mr Segal:** I do think you've hit upon a very good point. In terms of bringing an historical perspective to this, if one wants to look at a starting point, as I touched on in my opening remarks, you can go back to the Askov case in 1989. At that point, the system was bursting at the seams. As a result of that particular decision and the interpretation of it, we saw two things happening. We saw in an unprecedented way for the first time in any province in Canada a number of cases not going ahead on their merits, which is a very difficult thing for victims in particular. I think at that point it started us thinking about how we can start to work more smartly. I think the police, probably as a community, pay attention to that and maybe pull back a bit.

We took some steps within the ministry and started to place an emphasis at the front end of our system instead of just being reactive. Steps were taken—it was called the investment strategy in those days in the early 1990s—to try to put more emphasis on everyone paying attention at the front end and trying to set up some realistic goals. I think we made some headway. Then, over time, populations started to increase, the nature of crime has become more complex, trials have become more complex, police hires, and in the last couple of years, as you've touched on, the number of charges has gone up.

So you're quite right, Mr Mauro, one has to look at this over a period of time. I'd like to think we're totally transparent in terms of our explanation over that period of time, and there have been these trends that you have touched on. My point is, in the last couple of years it has again become a challenge. It's not a big point, but it's a point—more charges in the system, and some of these other factors.

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**Mr Phil McNeely (Ottawa-Orléans):** On page 35 of the auditor's report, in 1997-98 the number of cases disposed of was the same as in 2001-02. So in four years, the courts have not disposed, on an annual basis, of any more cases. It seems that we're always behind the new charges by a certain amount. Until your disposal rate comes ahead of your charges received rate, you're going to continually build up this problem of over eight months.

Why could the courts not expand their capabilities in that four-year period?

**Mr Segal:** I think, Mr McNeely, there have been some expansions. For example, I did refer in my opening remarks to the fact that there were 10 fresh appointments that were recently made, and then another five are expected in the very near future. That's one example of expansion that has occurred.

You've hit, on page 35, upon a very interesting point: the relationship between charges coming in and charges disposed of. Sometimes we see that as more charges come in, if it starts to go up to a significant degree, that tends to clog up the system with the possibility of more appearances, the issue that Ms Broten touched upon. In making those appearances more meaningful and compressing them, we'll look at issues such as working more smartly and some additional judicial appointments.

**Mr David Zimmer (Willowdale):** Mr Segal, two or three times in the course of your opening remarks you struck on this theme that there are two partners that are essentially in charge of the court system: the court services division and the judiciary. That's a very unique relationship, and I had the impression from your remarks that for the system to work with that relationship between the judiciary and the court services, the minister really has to be in sync.

I'm referring to the auditor's report, on page 30, where he raises the 1997 audit concern: “The effective administration of the courts was hampered by the lack of a clear division of authority and responsibility between the ministry and the judiciary in the management,” and so on, and that negotiations were in place to develop a plan for reform. Then he notes that in the current status of that reform initiative, “The ministry was unable to achieve consensus with the judiciary, and negotiations were therefore terminated.” We've heard briefly about some new steps to get that reform progress activated again. Can you elaborate on the steps that are being taken?

The second question, a follow-up question: The Attorney General spoke at the opening-of-courts ceremony sometime in January. That is, as you know, the chance for the Attorney General once a year to have a direct dialogue with the judiciary. I think it was particularly important this year because of the new government, the new Attorney General. Can you give me any sense of the thrust of the Attorney General's remarks and perhaps how they were received by the judiciary, keeping in mind we want to rebuild this relationship, or at least that's what the auditor said we should be doing?

**Mr Segal:** To go in reverse order, I am sure the Attorney General was looking forward to the opening of the courts, it being his first opportunity to do that. I'm sure he enjoyed the opportunity to speak with the judiciary and the public in relation to some of the things on his mind. I have no doubt that it was well received, because he, like all attorneys general, considers the judiciary to be an important part of successful administration of justice and works hard to have good relations and to promote respect in terms of public confidence.

With respect to the auditor's report, I don't think you were suggesting at all that it was a stark remark. I think what really happened here was that in 1997 there was an initiative and there were certain aspirations. It didn't quite hit the mark in terms of concluding, but out of that particular dialogue and exercise a lot of wonderful things happened.

First of all, the relationship between the judiciary and the ministry and the attorney of the day continues to be very strong.

Secondly, although it did not move toward a mature solution that might see something like a court services agency, it provided a platform for added strengthening of the relationship between the court services division and the judiciary. Some of the examples I gave in my opening remarks I will just briefly touch upon, because they are pertinent here, such as the inclusion of representatives of the judiciary at senior management tables of the court services division in terms of management, planning, budgeting, fiscal controllership and the like.

As well, the implementation of a five-year plan, which requires a lot of work by the court services division in conjunction and in working with the judiciary and leading to the establishment of a number of service standards—which you will see in the first annual report that is on the Web site and has recently been released—shows the kind of strength of relationship and dialogue between the judiciary and the court services division.

Those particular service standards are there to promote access to justice, efficiency, controllership, timeliness and the like. They are the sorts of goals that any excellent relationship involving court services and the judiciary would entail.

In addition, we meet regularly at senior and administrative levels to discuss issues such as how the issue of mobile blitz courts is going and what are potential issues to improve the efficacy of those mobile courts and to consider, bearing in mind the independence of the judiciary, the issue of possible emerging trends and new sites.

Although that's what occurred in 1997, the work that followed from it has been excellent. It's been significant and it's a great platform for a healthy professional relationship and continued building on it.

**The Chair:** I have Mrs Sandals, Mr Baird, Mr Qaadri and then Mr Kormos.

**Mr Deputy:** I think one of the problems that I'm seeing emanating out of the questioning here—and I ask the acting Provincial Auditor to help me here—is that the

courts administration program in 1997 was spending \$252 million; in 2002-03, you're spending \$302 million. That's about a 20% increase in your financial resources. The charges increased by 13%. Add inflation, which has been very low for the last number of years, and you're probably pretty close to 20%. So the resources have perhaps kept up with the increase in the number of charges, plus inflation factors.

I guess what the committee is struggling with is why, then, outside of those resource allocations, did we continue to have a growing problem?

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**Mr Segal:** First of all, I think you've correctly noted that there has been a not insignificant resource response. But like most resources within government, it's generally a response; we don't anticipate.

A couple of points I would like to stress: The first, which I dealt with at the outset of my remarks, is that the reasons for a backlog are diverse, and include issues we're trying to get a better handle on, such as the complexity of new federal legislation, and we've been dealing with that.

The second point I would make is that there have been issues, such as changes to remuneration, collective agreements, salary and wages, which again would reflect. I'm most familiar that after several years, for example, the crown attorneys received a not insignificant increase. That would be reflected. But there are increases that are given every year or every three years through collective bargaining, commissions and the like. As well, there have been some additions to the resources—some additional judicial appointments and the commensurate staff—that would be reflected in those sorts of figures.

**The Chair:** Because Mr Baird has not had a question, I'm going to ask Mr Baird, and then perhaps after Mr Baird asks his questions, we will break for lunch.

What is the desire of the committee: 1:00 or 1:30?

**Mr Kormos:** One o'clock.

**The Chair:** OK. John?

**Mr John R. Baird (Nepean-Carleton):** Congratulations to you, Deputy, on your appointment. I guess it's an exciting opportunity to come before the committee so soon after your appointment. I recall being Minister of Energy and the now-Attorney General having a lot of fun with me at the estimates committee in the same circumstance.

I quote the auditor's recommendation on page 41: "The Ministry should ensure that adequate controls are in place over expenditures so that goods and services, including consultants, are acquired competitively and in compliance with Management Board of Cabinet directives." This is obviously dealing with the past year, but could you tell me: Since October 2, what central advice has the Ministry of the Attorney General received from cabinet office, from management board or from the Ministry of Finance with respect to the use of consultants?

**Mr Segal:** Thank you, Mr Baird, and you weren't kidding about making my life interesting.

I'm only acting. I don't say that to have any licence from the quality of your question—

**Mr Baird:** We don't get any licence for acting on this side either.

**Mr Segal:** —and I've only been acting for the last number of weeks, so I'm not in a position to respond to that question. I can, in terms of information received and the like—I'd need to be briefed on that. What I can tell you with respect to the issue of consultants is that it's something I take very seriously and that we take very seriously. We don't need people to remind us of the importance of following procedures that are in place. That's something that should be uppermost in my mind; it is. As I understand it, steps have been made to reduce the amount of consultancy, and that has been reduced in the last number of months. I have every confidence, from what I do know, that it's going to go down further. I take your point. That's something I will pay a lot of attention to.

**Mr Baird:** With the other talented, hardworking and effective officials in the Ministry of the Attorney General, would you know of any specific communication you received from the cabinet office, the Premier's office, Management Board or finance with respect to the use of consultants? That's not a subjective—

**Mr Stephen Rhodes:** Not that I'm aware of, aside from the normal process we go through around this time of year in terms of what used to be business planning and now is results-based planning, and being asked to look at all our expenditures extremely carefully.

**Mr Baird:** The auditor raised this issue as one of his recommendations. So would it be safe to say that, corporately, Dalton McGuinty's rules are identical to Ernie Eves's rules?

**Mr Segal:** I'd like to think it's this deputy's rules. I'm answering the question, and what I've indicated is that it's something we take extremely seriously.

It's a rare occasion. It's something the Provincial Auditor has properly noted. We've looked at it, and we've taken some steps internally. We don't need anything. The Provincial Auditor remarking on that is enough for us to take it seriously. As soon as his remarks were published or were communicated, steps were put in place, and those controls are in place. Now, I or my office may have received something. I'm just indicating that because I'm acting and new, I might not be in the best position to respond, but I would not—

**Mr Baird:** In fairness, you do have a number of senior officials from your ministry who obviously, looking specifically at the recommendation contained on page 41, would be able to provide that answer. It's not a value-based issue. It's not an issue based on you as a new deputy in terms of your standards. I'm just wondering, did you or did you not get any communication from cabinet office, the Premier's office, Management Board of Cabinet or finance with respect to the use of consultants?

**Ms Debra Paulseth:** Maybe I can help with that. I'm from court services, Mr Baird. I am not aware of any new

procurement rules asking us to follow any new rules around a competitive process. We have always been expected to do that, and those rules have not changed. There are procurement rules, there are rules to follow a competitive process, and in these circumstances, as noted in the auditor's report, we had not followed them.

**Mr Baird:** I appreciate your answer, and I thank you. You specifically qualified it, saying "procurement" of such. Is there any expectation from cabinet office, Management Board or the Premier's office with respect to the use—not just procurement but the use—of consultants?

**Ms Paulseth:** I do not know of any change.

**Mr Baird:** So we've got the same. I thought the rules with respect to the use of consultants were acceptable when Mr Sterling was at the Ministry of the Attorney General, so I take no issue with it. I just point out that here is one issue where there has been no change with respect to the use of consultants from the former administration to the current one.

With respect to the budget process you're now undergoing, do you have a central budget in the ministry with respect to the use of consultants, or is it on a line-by-line basis depending on the requirement?

**Mr Rhodes:** It's on a line-by-line basis within the divisions. They have to look at their business requirements and determine what the most appropriate approach would be.

**Mr Baird:** With respect to the budget process, are there any expectations that have been assigned to the ministry with respect to reducing the use of consultants in the upcoming 2004-05 budget or any in-year expenditure controls?

**Mr Segal:** Do you mean apart from compliance?

**Mr Baird:** Apart from compliance. I'm talking about financial reduction. Has there been any expectation like, "MAG, we need \$2 million saved from you"?

**Mr Rhodes:** No specific target provided in terms of, "In this particular stream of business, you must." However, similar to previous years, the ministry will get a planning allocation and be expected to do what we can to live within that. That's no different than—

**Mr Baird:** I thought you did a good job on that, so I have no complaints.

Maybe I'd better to finish off and we can come back after lunch. I do have another area and another recommendation. I'm happy to go around again. I'm in your capable hands, Mr Chair. I did get to this place on your coattails.

**The Chair:** We'll adjourn at this point and reconvene at 1 o'clock.

*The committee recessed from 1200 to 1302.*

**The Chair:** We'll reconvene and get going so that we can try to keep things on track and get out of here at a decent hour.

Although Ms Sandals was next in order, Mr Qaadri hadn't had a question, so I'm going to let him go first and then Ms Sandals.

**Mr Shafiq Qaadri (Etobicoke North):** Thank you very much, Mr Chair, and my parliamentary colleagues.

I would like, Mr Segal, with respect, to ask you to help me conduct what I would call an autopsy—I say that as a physician fairly pointedly—with regard to the integrated justice project and some of the raw numbers that have been highlighted for us.

I understand this was a program created in 1996. Total expenditures to date are something in the order of \$21 million. The thing that particularly puzzles me is that it was not a project that had, for example, excellent results or even moderate or poor results, but apparently no results of any kind at all. Something like six years later it was in fact fully abandoned.

I'd like for a moment, with your indulgence, to quote, from December 2001, the then Attorney General of the province, the Honourable David Turnbull, who said, "We've already acted on many of the recommendations. The integrated justice project is transforming public safety and justice for the good of all Ontarians." It goes on: "This is a very good deal for the taxpayers of Ontario and will yield us a much better justice system, with technology that is unavailable anywhere else in the world." It goes on to say, "What we have seen out of the integrated justice program is a groundbreaking area. We're moving into new areas" and so on.

I understand it was an effort to modernize and make more accessible the information collected, whether it be case material, transcripts, documents, e-filing, data tracking and so on.

I'd like you to comment. Was it at the level of the police, the crown attorneys, the courts, the corrections services, the Attorney General's office itself, and was it a failure of vision, mismanagement? Is there anything residual to show for it? Did we just run out of computing power? Also, with respect to your comments to Mr Kormos when you said you would not wish to be presumptuous in your replies to a person of his experience, I'm sure you'll maintain the same courtesy to me and extend to me an answer requisite with my experience also.

**The Chair:** Just before we begin, we were trying to keep different things—you've jumped ahead. We were trying to do the court backlog and then get to the information part later. Are there other people who have questions about the court backlog who want to talk about that? I am at the committee's disposal.

Why don't you go ahead and answer this, and then we'll finish the other one off in a few minutes.

**Mr Segal:** Yes, Dr Qaadri, I'd only want to be taken as respectful.

**Mr Baird:** Proportionate to your parliamentary experience?

**Mr Segal:** Which is zero in my case.

The Honourable Mr Turnbull was Solicitor General at the relevant time, not the Attorney General, but I'm sure you meant that.

In any event, there are just some remarks I would like to make about that particular project. As you may be aware, it came to an end when the work term under the common purpose procurement arrangement with the

private sector consortium expired in October 2002. Responsibility for the project's initiatives was transferred from the partnership to government.

A brief chronology, which hopefully responds to some of the issues you've raised: In April 2001, negotiations with the EDS consortium led the consortium to attempt to amend the common purpose procurement arrangement; that took place over a 20-month period. In September, the final set of negotiations ended. In October, the five-year term under the CPP arrangement expired. Then full transition of the integrated justice project applications from that arrangement to ministries was successfully completed as of November 30, 2002, without issue. In December 2002, EDS filed a notice of action in the courts. As a consequence, I can tell you that the ministries and EDS are in ongoing discussions regarding the former integrated justice project, but I do not feel it would be appropriate, in view of the fact that it's before the courts, for me to comment further.

Having said that, I would say that the ministry has taken the issue of integrated technology extremely seriously. As I alluded to, we are in the process of implementing the Frank system, which is a new case tracking system for civil, small claims, family and superior court criminal cases to look at case flow, to look at caseloads and to provide more accurate information about court proceedings, including wait time for trials and other hearings. We're also making significant improvements to criminal case tracking on the ICON system. We want to have improvements to the quality and scope of information about criminal cases in the Ontario Court of Justice, including wait times for trials and other events.

We are continuing to evaluate e-filing in Toronto's Small Claims Court. As I touched on before, among other initiatives we are continuing to work with the stakeholders on an electronic courtroom which has been established in Toronto to test multi-media presentations, evidence, remote appearances and digital audio recording.

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**Mr Qaadri:** One quick supplementary: Is it possible for you, in your capacity, to assure the committee, and through us the people of Ontario, that, for example, some of the new technologies you allude to are not just simply a resurrection, a reincarnation of the IJP?

**Mr Segal:** What I've indicated, Dr Qaadri, is some of the important initiatives that we are working on. I'm not in a position to talk about attribution, in view of the matters as I've described them, but I can tell you that the ministry, and in particular the court services division, works really hard on these initiatives, to name a few, because these are all significant ways to get to our journey, to have better information, to do better on issues such as backlog, which we spent all the time on this morning because of its importance to the citizens of Ontario.

**The Chair:** We're going to skip back to the court backlog and try to finish that off, and then we can move to the information after.

Mrs Sandals.

**Mrs Sandals:** If I can actually follow up on two items that were raised this morning, the backlog and some of the material that Mr Baird raised, Mr McNeely drew to our attention the chart that's on page 35 of the auditor's report. The auditor certainly raised the issue in 1997 of the court backlog, and there seems to be a lot of evidence that the chief justices were also concerned about the court backlog. Yet when you look at the chart that was supplied to us on page 35, we see that the number of cases that were disposed of actually fell. It goes down from 1997 to 1998, it goes down again in 1999 and it sort of levels off in 2000. So the number of cases that are being disposed of seems to actually have fallen by something on the order of 40,000 or 50,000 cases per year, which seems quite strange, given that the auditor and the justices are all raising as an issue the fact that the backlog is a serious issue. So I wonder if you could explain how it is that the number of cases that were disposed of actually seemed to fall during that period.

**Mr Segal:** The number of charges in the last two or three years has gone up by 13%. It's gone up by 50% in Brampton; it's gone up by about 20% on average in most GTA jurisdictions. Those particular kinds of cases are very difficult cases and, as well, I've alluded to the fact that we are faced with certain other challenges. In this most recent period we've had a new Youth Criminal Justice Act, as one example. Practitioners will say that it is very much more complex than its predecessor. That is a federal initiative that we have to implement and grapple with.

I would say that since 1997 we have been very active as a ministry. For example, we have worked with the judiciary to implement blitz and mobile courts. That is since 1997. We have worked on a protocol for case management improvements. That's since 1997. We have instituted a bail best-practices protocol; again, since 1997. We have involved ourselves with the judiciary as a result of additional resources, with a coordinated case management initiative involving 15 additional judicial resources and commensurate resources to the rest of the system and, as I indicated before, 10 of those new judicial appointments have been made and many of the support hires have been made, all the while working on re-engineering. That is what we are grappling with and have done since 1997. But I will say in conclusion that in the last two or three years, in significant and busy parts of the province, the increase in charges coming in has been quite marked.

**Mrs Sandals:** It does seem a worrisome drop, at least initially, in that period.

The other issue I wanted to talk about was the whole issue of capital projects and Management Board directives. In the conversation with Mr Baird—

**The Chair:** Can we get finished with the one and then move on to capital projects?

**Mrs Sandals:** OK.

**The Chair:** Mr Kormos.

**Mr Kormos:** You've indicated that it's been a difficult process because there are all sorts of factors that

aren't within the direct control of the province of Ontario. You've got federal legislation, like the new young offenders' act, and you've got changes in the size of communities like Brampton, a huge growth community. The chair has noted a 20% net increase in investment, yet no significant reduction in these Askov—the other guy was Melo. Was it Askov and Melo?

**Interjection:** That's right. Good memory.

**Mr Kormos:** Both of them are dead now, as I recall.

*Interjections.*

**Mr Kormos:** No? Askov is still alive? OK.

**Mr John McMahon:** He's still with us.

**Mr Kormos:** That's a Canadian legal trivial pursuit answer. Somebody may thank me for that someday.

In any event, to cut to the chase, what is the current plan? I heard you talk about working smarter. I have tried, however fecklessly, to do that all my life, to no avail. What's the plan?

**Mr Segal:** You can never say "to no avail." It's a constant challenge, as I tried to indicate.

We really take this extremely seriously. From the prosecution and victim support points of view, it's not good to have a case that isn't heard on the merits. It's very difficult to explain that to a victim, and we work very hard to try to do that.

In addition to some of the steps that I just indicated to Mrs Sandals—I mentioned four or five steps since 1997 that we're taking—there's some additional methodology that we use. Some of it is very simple. For example, when we go into a particular jurisdiction to deal with a blitz or mobile court for the next three or six months, thereby creating a little additional capacity, one of the things we try to do is look at the cases at that moment in time and try to draw forward the most serious cases that seem to be out there the longest and offer earlier trial dates for those—to do some triage. It's a constant challenge, Mr Kormos, as I'm sure you know.

We do continue to try to work smarter. One of the additional things we've done in the last year or so, and that we're going to move forward with, are these summits, getting all of the players in the same room to discuss matters of mutual interest to see how we could work better together, so that the collective, respecting the independence and the constitutional perspectives we bring, can all work together so we move the system along as best we can.

Some degree of backlog, as I tried to indicate in my definitional attempt earlier, is always going to be there. You can't have a system—at least in Canada—where you'd have a case that would be ready for trial the next day. But at some point it becomes too long, and that's what we're trying to cut down. The Supreme Court of Canada has said, "Do it within a reasonable amount of time." We're trying to make sure we stay within those boundaries. We have all of these initiatives underway, including a summit in the spring to help roll out some of these best-practices protocols or ensure as well that their release has the support of the broader justice community and they get off to renewed or new kick-starts, with

support from the judiciary, the defence bar, the crown and so forth.

**Mr Kormos:** Fair enough, but back on November 27, in response to a hard-hitting question in the House, Mr Bryant talked about having appointed 10 new justices to the Ontario Court of Justice: "This is just part of our government's commitment...." In another response shortly after he had been made Attorney General—this on December 3—he talks again about the 10 new justices appointed: "We have another 10 appointments that will be made." I trust one of those was the controversial one that was reported in the *Globe and Mail* on Saturday; I'm not sure. "We will be hiring 50 additional crown prosecutors." So is appointing more judges and hiring more crown prosecutors part of the plan? If it is, what is the goal? Where are we headed? And obviously you need courtrooms for these people to work in.

**Mr Segal:** Absolutely.

**Mr Kormos:** Because if you've got judges with no courtrooms, and that's a dilemma in a whole lot of places that I've been told about, they go home or to other places right after.

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**Mr Segal:** You've raised a number of issues, and it may underscore, respectfully, that it is a complex issue.

I think in Ontario we have one of the finest processes for appointing judiciary in an independent fashion. Lots of jurisdictions look to Ontario in respect of that system, which is merit-based and independent and transparent.

I can tell you that the number of dispositions has increased 6% in the last five years, by my calculations.

You're right: The issue of courtrooms is an important one, because if you decided to make a move and increase capacity even for a short time, you'd have to have the ability to house that additional complement, whether short-term or long-term.

I think the ministry has become a lot better at looking at the challenges. In terms of physical space, we do have probably one of the largest challenges in government as we deliver courtrooms in 250 different sites. We're trying to get better at figuring out how we approach our obligations, so we're trying to move ahead and look at that appropriately. There are techniques that we can use by moving cases, with the agreement of the judiciary, from one jurisdiction to another jurisdiction or one courthouse to another courthouse that's close by—Welland to St Catharines, those kinds of examples—if we note that it's a little bit more quiet in one jurisdiction. We're trying to get the maximum efficiencies there under the auspices of the judiciary and not adding capacity unless we know that we're in a position, as best as possible, to accommodate that additional capacity and move forward in a thoughtful way in relation to that.

Where are we trying to get to? We're trying to get to a situation where, in as many places as possible, delay is reasonable; where the number of cases that are stayed for unreasonable delay are the absolute lowest possible; where we don't have to be put in the position, whether it

be through the crown or a victim/witness, to indicate that a case can't be heard on its merits.

We have to be attuned to all of the diverse factors that you yourself have indicated in your last question, including demographics and the like.

So, yes, it is challenging. Working with all of the stakeholders, we are making progress. We're constantly trying to improve, and I'm confident that we will continue on that path to try to get those cases, as much as possible, within that reasonable zone.

**Mr Kormos:** I think everybody in this room supports you in your observation about the Scott reforms to the appointment process as being positive and effective. However, none other than Chief Justice Lennox, both in 2003 and again in 2004, in his statements to the opening of the courts, commented on concerns around appointments of justices of the peace. In 2003 he expressed concerns about the nature of the qualifications and standards and, I put to you, implicitly around issues of supervision and training for justices of the peace. He referred to them again in 2004 and talked about former Attorney General Young as having been interested in conducting a reform but being distracted—my words, not his—and then talked about the new Attorney General's new commitment to reform those things. What's the status of that? Was it in 2002, the Ontario Association of Chiefs of Police—that now-notorious anecdotal report on justices of the peace?

**Mr Segal:** I'm not sure I'm familiar with that report, Mr Kormos.

**Mr Kormos:** It's in the ministry. Anyway, what's happening with reform around the appointments process, because some have accused that process of being the last bastion of overt patronage to the bench.

**Mr Segal:** I'm glad that you agree that the process for the Court of Justice is the way you describe it. There are issues with respect to improvements in the justice of the peace process that the ministry is looking at. You've canvassed a variety of issues. I will be working with the ministry to get briefed and look at those issues. Questions of training are things that we take very seriously. I know that we're constantly looking, with the judiciary, to improve opportunities for training. I'm aware of some of the issues that you have raised, and those are some of the matters that I will be paying some attention to as I get briefed with respect to justices of the peace, their appointment, their training and allocation.

**Mr Kormos:** Is there a time frame on that? When can we expect to see something? How is the ministry going to go about doing that? How are they going to develop a new appointments process, develop a new standards and qualifications schedule, if you will? How are they going to approach this? Is it going to be purely internal? Is there going to be a public process? When can we start hearing about this? What's happening to JP appointments in the interim?

**Mr Segal:** That's about seven or eight questions, Mr Kormos.

**Mr Kormos:** Old habits.

**Mr Segal:** In general terms, as I indicated before, it's something that I have to get briefed on. I would like to familiarize myself with the issues. For example, you've raised several issues. I'd like to think about those. I think you treat them seriously, and I'd like to brief myself on them, and, at some point, I need to brief the minister. Then I may be in a position, or the ministry may be in a position, to provide some answers.

**The Chair:** We will not likely come to a conclusion in our report for some months. I invite the deputy to write us in response to that particular question.

Mr Baird, you were next on the list.

**Mr Baird:** I just want to follow up. Anything else come to light with respect to—

**The Chair:** Sorry, Mr Baird. Ms Broten was next. Excuse me.

**Mr Baird:** I know you, sir, to be the wise helmsman of the Ontario Legislature, and I defer to your good judgment.

**Ms Broten:** I guess if we're almost getting to the end of talking about the backlog, I think all of us in this room are hopeful that one day we won't have to talk about a backlog in our province. We've heard that a lot of protocols have been put in place since 1997, but at the same time we've seen a 65% increase in the number of cases languishing over eight months.

I guess it raises, for me, the need for us to look at the effectiveness of the measures that we're putting in place. For example, you talk about more mediation. How are we going to measure the effectiveness of those measures as we move forward? When you talk about diversion programs, against what benchmarks are we going to measure the effectiveness of the programs, so that one day we can come back and see that the programs that we've put in place are effective in reducing the backlog and, at the same time, having a quality court system? Reducing a backlog by getting rid of cases by pleading to lesser charges is not a satisfactory result for complainants and victims.

The measurability and the effectiveness is something that we need to see happen in years to come, because we want to come back and really look at what we have done to make this system concretely better, recognizing that there are lots of things that we don't control, but taking a good, hard look at the things that we do in making sure that the measures that we've put in place are working or we've disbanded them.

1330

**Mr Segal:** I'm going to ask Ms Paulseth to respond, if that's permissible, and then we might have some follow-up.

**Ms Paulseth:** I think you've raised in this question an area that the auditor has also pointed out to us we're not quite up to snuff on, and that is relating to the gathering of information, getting our IT systems in place, reporting in a more transparent way.

If I could just follow up on what the deputy mentioned previously, we're trying to get better in measuring what we do, starting in an incremental way to improve our data

collection in the ICON system, for example, particularly with respect to criminal courts, so that we can create accurate baseline measures.

A second concrete example is the one that the deputy mentioned regarding a new report that we're going to put into place on April 1 this year—we're hopeful it will come in then—where we have worked with the judiciary to set up maybe 10 examples of reasons for adjournment, which is of course one of many significant issues in getting cases to the trial door so they could be heard on their merits, working out meaningful appearances.

What we've done is agree on 10 definitions. We have agreements that on April 1 we will start recording exactly what is the reason for adjournment, so that once those reports start coming in, we'll be able to identify those appearances that perhaps aren't as meaningful as they should be.

These sorts of measures will take us down the path of being able to understand better what is going on, to work with the judiciary, the institutional users, and set targets that are realistic. Those are a couple of the concrete things we're trying to do.

**Ms Broten:** Maybe I can just follow up on that, though. I guess I would like to see it go one step further, as someone who has filled in the forms about what the adjournments are about. It's not that helpful if we don't do something with that information. It's not that helpful to say, "Check, everybody has to go to mandatory mediation," if it's not a useful venture for the parties to be at and it's just another waste of court resources because nobody wants to mediate at that time, for example. So we have to do some critical analysis of the systems as they are and make some determinations of whether we're using resources well and whether we can do better. I just wonder what, if any, plans are in place in that regard to make sure that the information is used and we really examine the effectiveness of what we've implemented.

**Ms Paulseth:** I think some of the mechanisms we have in place—and of course, we can always be searching for better mechanisms—are to actually first of all track the information accurately, make it available to everyone in a transparent way and, third, sit down with the people who are part of that process. So for example, we now have several subcommittees working out of our backlog summit, and in the subcommittees we bring to the table, "In the best practices for bail courts, here are the data, here is where we're going wrong, here is where we seem to be having a backlog," and having the parties work together on meaningful analysis—is more information needed; what's going on there—and come up with a best practice that then gets communicated and trained across the province. But you're absolutely right: We have to look for more and more opportunities to be doing that.

**Mr Baird:** Just going to my questions with respect to consultants, you said you weren't aware of anything. Would you have any objection to looking and seeing if there was any documentation on that?

**Mr Segal:** I'll take it under advisement, sure. I don't have any objection.

**Mr Baird:** If you have no objection—

**Mr Segal:** Through the Chair, I'll take my guidance as to what's appropriate.

**Mr Baird:** If you have no objection, I would move that the Ministry of the Attorney General provide the committee with a copy of any and all directives pertaining to the use of consultants received from a central agency since October 2003 and that the clerk distribute to committee members. And, in the event that no such documentation exists, that confirmation of the same be made in writing.

**Mr Zimmer:** On a point of order, Mr Chair: I don't think that's an appropriate thing to put to the deputy here. It may well involve cabinet communications and so on. There are other avenues for you to ask that question. In my view, it's not appropriate to ask that type of question of a deputy at this type of hearing.

**Mr Baird:** He has said he has no objection to providing us with such information. My concern is that there's a recommendation from the Provincial Auditor with respect to the use of consultants. I'm familiar with the directives that were in place until October 2003. I want to know, as a member of Parliament, what directives have changed since then. Do you have any objection to that?

**Mr Zimmer:** This is not the appropriate forum to direct that question to the—

**Mr Baird:** Do you have any problem, though, with that? You don't think that as members of Parliament we should know what the directives are with respect to the use of consultants in the public service?

**Mr Zimmer:** I have no difficulty with asking that question, but this is the wrong forum for that.

**Mr Baird:** Why is this the wrong forum?

**Interjection:** Mr Chairman, a ruling, please.

**The Chair:** The motion is in order. Anybody has the right to raise a motion and put a motion in front of the committee, and we can have a vote on it. But it's often the practice of this particular committee to ask the deputy to provide that, the deputy undertakes to provide it and it's done.

**Mr Baird:** I asked, and he said he would have no objection, so I just wanted to put this as a request from the committee, not just as an informal request.

**The Chair:** Often the committee members will ask deputies for additional information, and it's always been the practice, as I understand it, for the deputies to—

**Mr Baird:** This will just formalize it then, Mr Chair.

**Mr Segal:** Mr Chair, when Mr Baird asked me, he asked me to look, and then his motion asked me to produce. As I'm sure you appreciate, they are two different things. I said that I had no objection to looking. But, as has been pointed out, there may be some issues around the production of them, and I'd just like to indicate that.

I understand the issue of providing some additional statistics etc, for example, on backlog. This is a little different. I will agree to look, but there may be an issue in terms of production. I'm not aware of where this may go, but I wanted to raise that distinction.

**Mr Zimmer:** That was my point.

**Mr Baird:** Just to address it, if there's a policy or practice or directive that would be issued by a central agency, I can't think of a possible reason that you wouldn't want a member of provincial Parliament to know. I'm following up. One of my responsibilities is to take the advice and the counsel contained in the Provincial Auditor's report and recommendations and do some due diligence to ensure that it's being followed up.

I'm very familiar with the protocol with respect to the use of consultants up until 2003. I'm not even telling you that I think the Provincial Auditor is right in his pointed suggestions and recommendations to the ministry. I'm not even telling you I accept it. Frankly, I've seen nothing that you've done a bad job in that area. I just want to know, as a member of provincial Parliament, what the rules are with respect to the use of consultants.

**Mr Qadri:** Mr Chair, on a point of information.

**Mr Baird:** There's no such thing as a point of information.

I would think that, as a member of provincial Parliament, you would, in the course of the new era of openness, which is used in many government communiqués to the press, be excited about the idea. I'm trying to think of what—

**The Chair:** Mr Baird, do you want to put the motion?

**Mr Baird:** I did.

**The Chair:** We need to copy it so the members can get a copy of it, and then perhaps once we get copies—

**Mr Baird:** I feel very strongly about this.

**The Chair:** Before we deal with the motion, the members have to see the motion.

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**Mr Baird:** OK. I've got it right here. So you'll come back to me the minute it's photocopied?

**The Chair:** We'll come back to it as soon as it's practicable to do that.

**Mr Baird:** As a member of provincial Parliament, I just want to know what the rules are with respect to the use of consultants. What is there to hide?

**Mr Zimmer:** What the deputy just said.

**Mr Baird:** The deputy said he might not want to give it to me.

*Interjection.*

**Mr Baird:** Well, why doesn't he want to give it to me?

**Ms Broten:** Can we move on while this is being photocopied and debate it at the appropriate time?

**The Chair:** We'll have a debate on the motion in a little while. Let's go on with the questioning. I believe Mr Zimmer was next.

**Mr Baird:** I have more questions.

**The Chair:** You have more questions?

**Ms Broten:** You've had your share.

**Mr McNeely:** On a point of order, Mr Chair: Which area of the report are we talking about now? Is it expenditure controls?

**Mr Baird:** Yes, I'm talking about page 41, the Provincial Auditor's recommendations.

**The Chair:** We're still on court backlogs.

**Mr Baird:** I told you that my questions weren't on that issue.

**The Chair:** They're not?

**Mr Baird:** And you called upon me anyway.

**The Chair:** We'll have to go back to you, then, Mr Baird. Mr Zimmer, are your questions on the court backlog?

**Mr Zimmer:** No.

**The Chair:** OK. Ms Munro, are yours?

**Mrs Munro:** No.

**The Chair:** OK. Then let's go on to the—

**Mr Kormos:** Mr Chair, I don't intend to belabour the court backlog issue. I think we've heard everything that Mr Segal is going to tell us with respect to that. I'm in no way being critical. However, having said that, is it the committee's contemplation to have the Attorney General appear before it with respect to any or all of these matters?

**The Chair:** That would be unusual.

**Mr Kormos:** I understand.

**The Chair:** We had not contemplated that. We can discuss that in the future. It will obviously not happen today or in the next two weeks. When the House comes back, we can—

**Mr Kormos:** I just wanted to check, because I'm just subbing for Ms Martel here.

**The Chair:** OK, we are now going to move on to another area, and that's the capital projects. Ms Sandals, whom I cut off originally, wanted to—

**Mrs Sandals:** That was actually what I wanted.

**The Chair:** OK.

**Mrs Sandals:** In the conversation we were having before lunch, I think there was agreement that Management Board has in place directives around how consultants and capital expenditures and various things—what the procurement rules are. I notice that in the capital project reports, the auditor has pointed out projects in which we're looking at initial contemplation that projects are going to be in the tens of thousands of dollars, and then they seem to have ballooned into the tens of millions of dollars, and there doesn't seem to be any competitive tendering process taking place.

I understand that the Management Board directive would have been at that time, and continues to be, that major projects should be competitively tendered. I wondered if you could explain why, in these cases the auditor has cited, the Management Board procedures requiring competitive tenders were in fact not followed, because the deputy made it very clear this morning that he believes quite passionately in following the rules. I wonder if we could have some explanation of why the Management Board requirements for competitive tenders appear not to have been followed in these cases.

**Mr Segal:** Without commenting on a particular case, you have noted my interest, which doesn't surprise you, in following those guidelines, and a commitment to try to follow them in future and, actually, to try to get ahead of the issue, because the maintenance of court structures in capital projects is a very difficult issue. There are a lot of

properties in the portfolio. We work with the Ontario Realty Corp, our mandatory service provider in this respect.

But just in a general way, I would say that sometimes what we're confronted with is a situation that arises out of what I would describe as an emergency, a health emergency; for example, finding mould that could be dangerous to the occupants of the building, users of the building, members of the public. In those circumstances, because of the important issue that was addressed this morning, the issue of backlog, we're often trying to do the best we can to discover the facts in an appropriate way, follow Management Board guidelines, but at the same time we're extremely concerned that the operations of a busy courthouse, such as in Newmarket, do not collapse but are dealt with in an orderly manner and that steps are taken to ensure that the cases don't add to backlog any further and that more cases aren't put at risk and the like. It's a difficult and challenging situation where, in an unexpected fashion, we're faced with what could be described as a health pressure.

**Mrs Sandals:** I understand, if you're going from a quarter of a million to half a million or something, that those are things that are being done fairly quickly. My experience with building projects is that when you start talking millions or tens of millions those are substantive projects and it takes quite a long time to go out and get the proper tenders. Would it have made a difference of a month or more to something that it appears was going on over a period of years, to follow the proper procedures and make sure the government and the taxpayer got the best price available? How did the decision-making occur in this case, that there wasn't a decision to go to a tendering process but instead a decision to skip the tendering process?

**Mr Segal:** As I indicated, Mrs Sandals, it's not something that one starts off doing. There will be situations in the future where we may be faced with a health issue—the users of the building come as the various public service branches and legislation kicks in, including health reports, health and safety issues—where we have to act extremely quickly, always with the immense responsibility and pressure of ensuring that everyone who uses that building is safe and none of the cases get stayed because of unreasonable delay.

When I said this morning that the issue of the calculation of unreasonable delay is visited on the crown, I didn't mean the crown prosecutor, as I'm sure you know; I meant anything in relation to facilities, judicial complement, crown action, police action. It could be as well at the former Ministry of the Solicitor General—it's all visited on the crown.

We're very committed to ensuring that, on the one hand, those procedures are complied with but, on the other hand, sometimes we're forced to move forward, through circumstances that no one wanted, to move expeditiously, to guard the health and safety of the thousands of users and members of the public who go into courthouses every day, and as well be concerned with the backlog issue and losing cases.

**Mrs Sandals:** If I may, then, given those pressures, how would you be moving forward in the future to ensure that, even where there are health and safety issues, when we're getting into these mega-projects we do appropriate tendering?

**Mr Segal:** The procedures are there. As I've touched on this morning, what we are trying to move toward is to have, with our partners and the ORC, a good sense of what our capital needs are, to be on top of this complex issue throughout the province, to be reacting less, to being more proactive.

As well, I think we have been forced to improve our responses in relation to contingencies that arise, whether they be power or SARS or work stoppages or health and safety in relation to a particular building. We're constantly trying to refine those so we don't overreact or react in a way that would add more cost.

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**The Chair:** Mr Zimmer, is your question on capital?

**Mr Zimmer:** No.

**The Chair:** Mrs Munro, is yours on the capital area?

**Mrs Munro:** No.

**The Chair:** Mr Mauro.

**Mr Mauro:** Mr Segal, is there a limit under which the ministry can sole-source contracts for capital work?

**Mr Segal:** Mr Rhodes?

**Mr Rhodes:** Yes, there is.

**Mr Mauro:** Do we know what that is?

**Mr Rhodes:** Off the top of my head, usually a single-source contract is under \$25,000. It's a fairly low threshold.

**Mr Mauro:** Would that be the same across all ministries or just within yours?

**Mr Rhodes:** It varies within ministries, but our ministry tends to be a little bit more conservative in that regard.

**Mr Mauro:** So anything beyond \$25,000 needs a public tendering process?

**Mr Rhodes:** It usually requires a certain number of quotes.

**Mr Mauro:** Yes, so you'll go to another level for quotes, and then beyond that there will be a third level for a public tender?

**Mr Rhodes:** My apologies. I'm sorry, I didn't catch the question.

**Mr Mauro:** You have one limit for single-sourcing, another limit for quotes and a third limit that requires a public tender?

**Mr Rhodes:** That's right. Not to make things more complex, there are usually vendors of record as well at certain thresholds.

**Mr Mauro:** Whom you would call on.

**Mr Rhodes:** That's right.

**Mr Mauro:** OK. Mr Segal, you made a comment in response to Mrs Sandals questions about "In the future we hope to." To me it sounds like in the past you've been unable to meet some of those guidelines. Please explain that, because that was my interpretation. It was my understanding from your response that "in the past we

have not been able to adhere to tendering policies and guidelines as just described because," and the reason I'm hearing is that all of these capital projects, or at least most of them, were acute insofar as they were health related and we need to move on them immediately.

Are you suggesting to me that all of the capital projects that apparently may have circumvented tendering policies were health related, and that's why we didn't adhere to tendering policies?

**Mr Segal:** I think there are some significant examples that the Provincial Auditor has referred to, the issue of mould.

**Mr Mauro:** I'm asking, though, if there are any examples of capital projects that circumvented tendering policies that were not health related. That's my question.

**Mr Rhodes:** There is one project listed in the Provincial Auditor's report for which we completely agree with the auditor's assessment, which is related to Milton. It was a particular project where funding was provided to a contractor and the services were not received from the contractor. We then immediately went back to the contractor, had the funds refunded, and the auditor was absolutely correct in their assessment. We've done additional things within the ministry to ensure that there are tighter controls and some additional training of staff.

**Mr Mauro:** So all the other capital projects that were not publicly tendered were health related?

**Mr Rhodes:** To the best of my knowledge, yes, aside from the vendor-of-record discussion I mentioned to you before.

**Mr Mauro:** All right. If they are health related and if, for example, there's been mould in a building for five years or 10 years, you're suggesting to me that we don't have a month to put a tender together for a \$20-million or \$40-million contract because there happens to be mould in the building? You tried to make the connection, Mr Segal, to the backlog, the backup in cases that existed as the justification, it seemed to me, for moving forward in as expeditious a manner as possible with the work on these projects. We could have set up an alternate court some place or rented a vacant building, created a temporary courthouse, publicly tendered a contract that might be \$10 million or \$40 million in value of public money instead of sole-sourcing a contract to who knows whom.

So I'm very uncomfortable with this, probably more uncomfortable with this than I am with the backlog in the cases, where we are using public money and just deciding who we're going to give it to, with no public tendering process. Quite frankly, I'd like to hear a bit of a better justification for that happening the way it has.

**Mr Segal:** A bit better justification, Mr Mauro, is not "There is mould and there is mould," but there is mould and there is mould, and some of that mould, as I understand it, can be extremely dangerous or of concern, as opposed to lesser types of mould. I'm not looking for any sympathy, but it's a very difficult issue when there is a health report that comes down without any anticipation. It's hard to find out what goes on sometimes in some of these superstructures. No one expects it. But if a health

issue is raised—take Newmarket as an example—and you're trying to figure out what to do with tens of thousands of cases the next day, and hundreds of court staff and thousands of users who are going to that address, it's a bit of a pressure cooker.

**Mr Mauro:** Mr Segal, you can't deal with them the next day anyway, because you're dealing with the mould issue. You're going to be doing something with that courthouse anyway, so my question is, why don't we do something to accommodate those court cases—an empty building or whatever—because you still need to deal with the mould issue, and while you're accommodating those court cases someplace else, we have a public tender to deal with the mould issue. I'm not sounding insensitive to the seriousness of mould and the potential long-term health benefits it may have on people working in that environment. What I'm asking is why we did not find some other reason or way to find out and go forward with getting a fair public tender for work of that large a dollar value. It seems to me that there were other options available to us.

**Mr Segal:** I think you raise a good point. Just to be clear, we did do all of those things that you suggested, so that might underscore your point. We did get a temporary courthouse set up. It was at some cost. While we were trying to grapple day by day, week by week, with emerging news on the health and safety front, we did try to keep the cost down as much as possible with respect to the temporary solution to keep the business of justice going. Can we do a better job? Absolutely.

**Mr Mauro:** So when we had a temporary court set up to deal with the backlog, why could we not publicly tender?

**Mr Rhodes:** In the Newmarket circumstance the reality was that the scope of the issue changed virtually every day. Initially the thoughts were that it was relatively localized and could be dealt with with staff in the building. Then the next day you'd get a new technical report that would indicate something more broadly. The next day it would be HVAC systems and many other things requiring replacement or significant modification. So it changed and it was quite fluid.

In the 2201 Finch context, I should mention that it had similar traits. Initially the thought was that staff could temporarily be relocated out of the East Mall and then be relocated back after the building was cleaned. It was determined that that was probably not feasible and in fact it may have been more prudent to do the things the way we did.

But the additional thing that was done in 2201 to try to mitigate the very real concerns expressed by the Provincial Auditor and yourself was that behind the scenes we did bring in cost consultants and quantity surveyors to ensure that, even though the system was changing and requirements were changing daily, someone was watching, in addition to us and the mandatory service provider, ORC, to ensure that we were getting value for money as best we could. It is not a replacement for a public tender and I'm not trying to argue it is, but that was the reality.

**Mr Mauro:** Is my recollection accurate that one of these situations began with about a \$100,000 contract, sole-sourced, that ended up being—how much?—\$30 million or \$40 million?

**Mr Rhodes:** That was the Newmarket example.

**Mr Mauro:** So a \$100,000 sole-source contract ended up becoming a \$30-million or \$40-million contract—given to the same contractor that started out with a \$100,000 job?

**Mr Rhodes:** Correct.

**Mr Mauro:** That's a very difficult thing to listen to and swallow, and the justification is that it's fluid and morphing on a day-to-day basis. That's a travesty. That's a terrible thing that's happened. It's an abuse of public funds, and I have some serious issues with it. Quite frankly, I'm not sure the explanations justify that kind of action.

Is that the only example that we can think of or that we're aware of where the dollar values were that high? Are there others?

**Mr Segal:** I think the Provincial Auditor picked one or two, the things that came to his attention, so it's there and you've taken us through them.

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**Mr Mauro:** The last question, then, around that issue: Is it necessary, when you circumvent the tendering guidelines, that you would receive direction from whom? Would it be Management Board of Cabinet? When you go to a dollar value that high, who gives you the OK to do that?

**Mr Rhodes:** Normally those things would be contained in a Management Board submission or a submission to the capital committee.

**Mr Mauro:** So you, as the ministry, would need approval to allow that contractor to stay on the job? OK.

**Mr McMahon:** One thing on that point from the crown's perspective is that although they were able to move out, one of the pressures facilities had was the judiciary—because we were in a trailer park, basically in the parking lot, and winter was coming. Every day we were up against, if we didn't get this thing done, the judiciary was going to shut down the temporary courthouse. If they shut down the temporary courthouse, we're done, from the point of view of administration of justice, if we don't have a courthouse. The amount of pressure being exerted by the independent judiciary to shut the temporary courthouse because it was of such poor quality—and that's no reflection on the people doing it—added to the pressure to get it done. Not that it justifies the end result, but it's another reason that they couldn't afford to allow that temporary courthouse to close.

**Mr Mauro:** Understood, but it sounds like we just made a bad choice on the temporary courthouse. Maybe next time we can get one that the independent judiciary would be more satisfied with.

**Mr McMahon:** The only problem with that would be that when they decide finally that this courthouse is uninhabitable on a Tuesday we have to be up and running with a courthouse on Monday, or we're done. You're

right; the best was a trailer park at that time on short notice.

**The Chair:** If you look at the bottom of page 43 of the auditor's report, it shows the evolution of the expenditures. I don't know if you've had a chance to look at that.

**Mr Qaadri,** is yours on capital?

**Mr Qaadri:** Yes. It seems to me that this whole issue of spending on capital projects is really one of fiscal responsibility and the stewardship of the province's resources. Without injecting an unnecessary level of drama, it seems a bit of a betrayal of Ontario's trust. The spending on capital projects approaches something on the order of \$300 million. Whatever the exigencies are, whether a mould alert has been sounded or a shutdown amber alert from the judiciary, when we're engaging in projects which no doubt will continue in other courthouses in which some infraction of the law or some bylaw or health hazard is detected, the whole initiatives of renovation and modernization and refurbishing are likely going to continue.

Just to highlight some of what my colleagues have said, I think what we're having a little trouble digesting, in terms of the stewardship of the previous administration, is how non-tendered, sort of publicly sheltered contracts blossom forth; for example, in Newmarket, from \$250,000 to eventually \$23 million, and, with regard to that interim location at Finch, from less than \$100,000 to \$8 million. Are you telling us that the contracts were awarded, yes, with the due haste of the mould alert being sounded, but to their nearest and dearest or the opaque and not transparent methods, or is it, for example, the consultants of which Mr Baird seems to be so fond?

**Mr Segal:** Dr Qaadri, what I said was that the Provincial Auditor has remarked on a couple of instances and had some significant discussion in his report regarding them, that we at the ministry take that seriously, that we want to get ahead of this, that we want to do better. We have a plan in place to get a handle on our entire portfolio, to try to stay ahead of particular circumstances, to try to learn some lessons from some of the contingencies we've been through and do a better job. That's what I commit to do.

**Mr Qaadri:** One quick follow-up. As you know, we've inherited a reasonable fiscal crisis that we have to deal with across the government in different areas; for example, the spending on capital projects, as I mentioned, is approaching something like \$300 million. My question is, what reassurances can you give to us that the stewardship of the past will not be continued? It seems to me that not only was the public tendering process skipped, but for a major authorization of this nature it was executed without ministerial approval, without the approval of cabinet and without the approval of Management Board of Cabinet. What assurances do we have that this process will be improved in the future?

**Mr Segal:** Dr Qaadri, I have indicated that it's important that we move forward, that we attempt to get a handle on this portfolio. The \$300 million you've talked about is a lot of money. You're quite right that it's important to

make sure that processes are followed, and certainly my intention is to be briefed on means to get a better handle on a go-forward basis to ensure that there is compliance, and that's what I'm committed to do.

**The Chair:** I think Mr McNeely also had a question on capital.

**Mr McNeely:** Yes, I do. It seems to me that one of the important parts here is page 42. The project was carried out without a fixed-price contract and without a proper competitive acquisition, without obtaining ministerial or Management Board of Cabinet approval. That seems to me just not following the rules. It relates as well to what John Baird brought up earlier: Have you been directed to follow the rules? I don't think it's necessary, maybe even in this case, where we're only talking \$8 million—from \$23 million to \$30 million is not so important after the billions on Pickering. But the rules are there. I don't think this new government has to tell you to follow them. We would expect you to, wouldn't we?

**Mr Segal:** I've tried to indicate this morning that you're quite right, sir, that I don't have to be told. That's my responsibility. I intend to do the very best I can. The points are well taken on all sides, and we're going to move forward and try to do a better job.

**Mr McNeely:** The second question: Of the \$30 million that was eventually spent without a lot of tendering involved, how much had to do with the mould issue? Was that \$1 million of the \$30 million?

**Mr Segal:** I'm not sure I can give you the figures. I'll look around in a second to see if I can get some specific assistance on that, but a great deal of it. But as touched on by Mr Rhodes, there were also issues regarding the quality of the air that emerged during this. So there were a number of health-related issues with what turned out to be significant work requirements to make sure that the courthouse was in a position to be inhabited again and to ensure that everyone using it would feel confident about their health.

**The Chair:** Now I believe we're handing out Mr Baird's motion, which he's entitled to have called at this point in time. Do you want to move your motion, Mr Baird, if you still want to pursue this?

**Mr Baird:** I move that the Ministry of the Attorney provide the committee with a copy of any and all directives pertaining to the use of consultants received from a central agency since October 2003 and that the clerk distribute to committee members. And, in the event that no such document exists, that confirmation of the same be made in writing.

I feel very strongly about this. The Provincial Auditor has come forward with a recommendation. I am a member of the Legislature; I want to do my due diligence to know what controls are in place for the use of consultants. This has been an issue certainly in my time in the Legislature, as my esteemed colleague from Niagara Centre will know: the use of consultants and what sorts of guidelines are in place. I feel I can't do my due diligence if there's nothing formal that's been followed since October 2003, because I'm well aware of the rules and practices that were in place.

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Too often, requests are made at committee—not this committee; I've not been a member of this committee in the past—and you just never hear anything back. I'd like to have some formality to it. I want the tools to do my job and to do my due diligence. I can't for the life of me understand what would be the objection. If there's a process or a policy that you have to have 60,000 people follow in the use of consultants, why wouldn't that be public information? I just can't conceive of why it would be secret.

This new deputy is a smart actor. He's someone with a great deal of experience in government. He's conducted himself very well before the committee, but there is the use of qualifiers, which does cause me concern. He has a responsibility to the secretary of cabinet, to the Premier, to his minister. Obviously, our responsibility isn't to the Premier, it isn't to the secretary of cabinet, it isn't to the Attorney General. It's to the people we collectively serve.

Virtually every document coming out of this government talks about a new era of openness. If the door to that new era slams shut in the office of the Attorney General, I think it's a sorry state. I just want to know what rules, what controls and what directives are in place for the use of consultants so that I am aware of them.

This committee is here as a government oversight committee. We're not here to rubber-stamp the executive branch. We are the legislative branch of government. It's so important that we have an opposition member mandated in the standing orders. Much has been written on the issue of a committee's, and particularly a minority's, access to information.

I just can't conceive that there's even a thought that this information couldn't be public. I want this information in order that I can follow up the serious recommendation brought forward by the Provincial Auditor. There may be absolutely nothing to learn, and there may be something quite substantial.

I do note that my esteemed colleague the chief government whip has come into the committee room and had chats with a number of his committee members. I assume that he's not giving any directive, that this is a government oversight committee and these committee members would be free to let the sun shine and the light come in to government. I look forward to support from all members of the committee so that we can follow up the auditor's report.

**The Chair:** I have Mr Kormos and then Ms Broten.

**Mr Kormos:** I want to speak briefly to at least three elements of this motion.

First, the credentials of Mr Baird as the mover of this motion: As we know, he was intimate with Andersen Consulting, among others, that took the taxpayers of this province for millions upon millions of dollars. I therefore tell you that we should pay close attention to Mr Baird when he rings alarm bells and raises red flags about the utilization of high-priced consultants who end up picking the pockets of taxpayers in Ontario and delivering so

little. It's sort of like the prisoner who has truly been rehabilitated, who takes that prison experience and the conversion he's undergone to lead others down the straight and narrow. So I commend you, Mr Baird, for moving this motion.

Second, the relevance of it: We're dealing with the auditor's report. The auditor specifically addressed controls over expenditures, including consultants. It is, I put to you, highly relevant, especially in the context of what you heard the acting auditor say earlier today, and that was that the auditor's office from time to time had more than a little bit of difficulty getting the information they were seeking. Did I misstate you at all in that regard, sir?

**Mr Jim McCarter:** I think you summed it up, Mr Kormos.

**Mr Kormos:** All right. So here we've got an auditor who's frustrated because his office is having difficulty getting information; an auditor who specifically raises concerns that even government members have expressed about the manner in which public monies have been expended, among other things, with respect to consultants. Not all of you were here during the fiascos around Andersen Consulting and its titular successors, but let me tell you, they were fiascos. Ms Martel and, from time to time, I came into this committee and we were just horror-struck at what consultants can do.

Thirdly, some members of the government—I'm glad the government's with us here, because I intend to call for a recorded vote on this motion. I'm glad all of its members are here. Why don't you note that members of the fourth and fifth estates are here as well? As Mr Justice Osborne had occasion to say a couple of weeks ago, the real test, the real standard, when you're deciding whether or not to do something, is whether you want it appearing on the front page of tomorrow's paper. There's going to be a recorded vote here.

We talked about the relevance; we've talked about the credentials of the mover. Let's talk about whether it's appropriate, because some members of the government howled in protest at the proposition that this committee should call for papers.

I took a look at the text *The Power of Parliamentary Houses to Send for Persons, Papers and Records: A Sourcebook on the Law and Precedent of Parliamentary Subpoena Powers for Canadian and Other Houses*, by one Derek Lee, LLB, MP. He writes: "A committee has power to summon witnesses or require documents to be presented only when expressly authorized by the House."

So I took a look at the standing orders, and sure enough the House has authorized this committee to call for the attendance of persons or the presentation of papers. Standing order 108(b) reads, "Except when the House otherwise orders," and it hasn't, "each committee," including this committee, "shall have power to send for persons, papers and things."

I suggest to you that we've got a duty to support this motion. It's our responsibility. We've got the power; it's relevant; it would be, oh, so enlightening. This committee has the responsibility of preparing a report, which will be

read by premiers, ministers, deputy ministers and ADMs, and by the general public to the extent that the press reports it. I put to you that we've got a responsibility to support this motion. We've certainly got the power; the standing orders say so. We've certainly got the issue of relevance resolved, because it's specifically within the concerns expressed by the Provincial Auditor. And we've got the authority of Mr Baird, a veteran of sleeping with consultants. As you know, when you sleep with consultants, at the very least you can get fleas.

**Ms Broten:** I've listened carefully to what Mr Kormos had to say, and I guess I'd say that I do want this on the front page of the paper tomorrow, because we on this side of the table have been talking about the need to curb the rampant abuse of the use of high-priced political consultants well before Mr Baird started talking about this issue and had a new-found commitment to ensuring that taxpayers' dollars are spent wisely. That commitment was something we talked about in advance of the election campaign and that we moved quickly on, once we formed the government. The one individual we did hire to examine the books of this province unfortunately indicated to us—

**Mr Baird:** A consultant.

**Ms Broten:** A well-respected former auditor indicated to us what a mess this province was in. Frankly, since October 2, we've been picking up the pieces and digging through the many issues that have been found across various ministries.

I guess I put to Mr Baird: You don't need a motion to bring forward information and bring openness to government. You just need ask. I've got the document right here, and I'm pleased to hand it out.

**Mr Baird:** He said there was no document.

**Ms Broten:** Let's talk about what this government has done. I'll pass this out. It's a memo from the Management Board of Cabinet on November 28, 2003, which came out as a result of Erik Peters's indication that we inherited a \$5.6-billion deficit from the previous government. As a result, we quickly implemented a number of strategies, number 5 of which was reviewing the current use of consultants. In this memorandum—the Chair of Management Board of Cabinet sent it to all ministers—was that they make “a commitment to find savings by reducing the use of highly paid consultants” and that they consider the government's commitment to do this in their ministry's business plans.

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**Mr Baird:** On a point of order, Mr Chair.

**Ms Broten:** So now you don't want the document any more, is that it? You want the information and you don't want the document?

**Mr Baird:** I wanted to get it. I asked the acting Deputy Attorney General and he didn't have it. His officials didn't have it.

**Mr Mauro:** He said he didn't know.

**Mr Baird:** He said he didn't know of it, so how was—

**The Chair:** What's your point of order, Mr Baird?

**Mr Baird:** Check Hansard.

**The Chair:** Mr Baird, your point of order?

**Ms Broten:** Openness of the government is something we've been moving forward. We're not hiding the deficit; we're giving the province and the taxpayers the straight goods, and we're curbing expenditures in government to make sure we don't waste their money. It's across all boards. It's not particular to this ministry. Maybe the new deputy is not aware of a document that came out before he was here. But frankly, we moved quickly on it. I want to see it on the front page of the paper, and I'm glad you raised the issue today, because it's something that we're concerned about. In fact, we've been picking up the pieces since October 2. We're pleased to provide this to you. Again, on the new era of openness, you only need ask to get the information you're looking for.

**The Chair:** Any other discussion on the motion?

**Mr Qaadri:** I'd like, first of all, to second the comments that were made by Ms Broten and just highlight some of the financial specifics. According to our calculations, over the previous four years, that administration spent something on the order of \$600 million of Ontario taxpayers' money on consultants in various forms. We campaigned on this particular issue and, as Ms Broten has quite rightly pointed out, this was one of the very first initiatives this government brought forth in order to restore a sense of fiscal responsibility and responsible stewardship of the resources of Ontario.

**The Chair:** Any further discussion?

OK, Mr Baird, wrap it up.

**Mr Baird:** Thank you very much—

**The Chair:** Just a minute. Mr Kormos first and then you'll have a chance to reply and we'll go to the vote.

**Mr Kormos:** I read this little two-pager, and I don't know: It's saying, “I ask that you also consider the commitment,” with respect to the reduction of the use of highly paid consultants in your review of ministries' business plan proposals. I don't know whether “consider the commitment”—saying, “Please think about it”—constitutes much of a direction. I don't know; I'm just sort of thinking out loud.

**The Chair:** Mr Baird, do you want to wrap up?

**Mr Baird:** I am concerned about this issue. I did come into Community and Social Services and renegotiate the deal with Andersen and the project was successfully delivered on time and on budget. The officials at the Management Board of Cabinet will all confirm that.

The member opposite from Etobicoke talked about Mr Peters. Well, that was an untendered consulting contract. No tender went out—an untendered consulting contract, single sourced.

**Mr Kormos:** Hand-picked.

**Mr Baird:** Hand-picked by the political actors. I happen to think the individual is a very credible person. When he was awarded with distinction from the Institute of Chartered Accountants, a quote from me appeared on the program of the ceremony, because I think so highly of the man.

I've looked at this document, and this is the typical letter you get from Management Board saying, "Please don't spend any money," and the part I like best, "Please don't come to Management Board to ask for any more money to be spent." Well, Management Board must not have met since November, I assume. But every year—and I sat on Management Board for three years and was a PA there—this memo generally has little effect. The fact that the Minister of Finance didn't book any savings from this in his fall economic statement suggests he had little expectation for it to yield any results.

In the new era of openness, I ask: Do you also consider this commitment is virtually meaningless? If there was a policy directive with respect to the use of consultants with some detail, none of the senior management at this ministry, with great respect, knew about it. So I wonder whether it has been disseminated appropriately.

Also, I did note and underline in my paper that there was a separate letter from the secretary of Management Board being sent to all deputy ministers to provide additional implementation details. Do you have a copy of that, Ms Broten?

**Ms Broten:** Am I under subpoena? Is this a hearing, Mr Baird?

**Mr Baird:** No. You're just talking about the new era of openness. I think the new era of openness is characterized on this committee by two actions: by the chief government whip coming in and talking to all government members, and the new era of openness and the ray of sunshine came in; and by the seriousness with which the Queen's Park press gallery is taking this issue by their attendance at this normally non-media-attended committee.

I just want to know what requirements are in place with respect to the use of consultants. There has been great hay made of this, and I've certainly learned a lot from it. I'm sure members of the new government will learn lessons every day, which is important to do.

I do want to see, and to know definitively, what controls and directives are being made to the public service. I think we have not just a right to the information but a responsibility to fulfill our obligations as members of this committee.

Specifically on page 41, as the member for Niagara Centre has pointed out, there's a concern of the auditor. I'm aware of the processes in place before that. Mr Qaadri mentioned the \$600 million and the use of consultants. I think we can do better, and I want to know what the plans are to do better to follow up the auditor's recommendation. I just can't see any reason why people would not want to allow the sunshine to come in. If all you have to do is ask, I'm asking.

**The Chair:** Thank you very much.

Mr Baird has moved his motion. I called it before, so we're going to move on with the vote.

**Mr Baird:** Recorded vote.

**Mr Kormos:** Recorded vote.

## Ayes

Baird, Kormos, Munro.

## Nays

Broten, Mauro, McNeely, Qaadri, Sandals, Zimmer.

**The Chair:** The motion fails. We'll now move on to—

**Mr Baird:** On a point of order, Mr Chair: I'd like to serve notice of my intent to raise a point of personal privilege on this issue.

**The Chair:** Here or in the House?

**Mr Baird:** In committee and in the House. I'm required to give notice.

**The Chair:** Because I cannot determine points of privilege, you'll have to go to the Legislature.

**Mr Baird:** I'm just giving notice on that.

**The Chair:** We're now going to move to, I hope, the last section of the report, on information. Is that where your point was, Mr Zimmer, or was it on something else?

Ms Munro?

**Mrs Munro:** My question has to do with two parts of this report, because I think they are contingent on each other. At the end, where the auditor's report talks about performance reporting, it seems to me from looking at this that the question around technology is very much an integral part of performance reporting and measurement.

In your comments this morning, you referred to the Frank technology. One of the comments you made, which I think is important in the context we're looking at today, was that prior to that and not so long ago there was nothing more than handwritten records. I want to talk a little bit more about some of the problems that are identified with the performance measurement, but I wonder if we could begin by looking at the question of the role of technology in the context of performance measurement. When you look at your system as you have described it, where would you put the ministry on a continuum of change? How far along are you in what you would see as a place where you could stand proudly and say, "We've implemented these measures and can now turn around and start acting on some of the materials we have identified?"

**Mr Segal:** It's a thought-provoking question in terms of giving a report card. I think, as the auditor notes, we have to do more, and we're committed to doing more. You have referred to some of the areas, such as the rollout of the Frank system. As well, there are the improvements to the ICON system, the electronic courtroom, e-filing and those kinds of things.

1430

I think the general issue of finding measurements so that we can move toward results constantly drives us. I don't think we're all the way there. I think the steps we have outlined today in terms of, for example, in the criminal sphere, getting more meaningful information about what happened on appearances and then moving

toward results and having discussions, having an open mind about what can provide the best results for the public, are the correct steps that we're taking.

The processes we have in place or were thinking about, should they be changed more? I think we're well on the continuum. We're not quite there yet, but it is important to keep making progress. I think the comments of the auditor assist us in that respect, and we're very focused on providing better technology, better measurements and better results.

**Mrs Munro:** Thank you very much. I guess that leads me into the second part of my question, which again is more specifically related to the performance measurement exercise. One of the comments made earlier today was about, for instance, the better use of the facilities and knowing the possibility of a change by the individual to a guilty plea and the opportunity that represents within court times.

There's also in your response to the auditor's comment something about the program evaluations and the fact that, from what you have here, in December there would have been the evaluation of the enforcement activity and judicial support services as your first step and then the dates for the other two. Taking these two ideas, then, in terms of the way in which you are looking at those efficiencies in the court system and the evaluation analysis that you have undertaken, what do you see coming out of that in terms of where you go from here on performance measures?

**Mr Segal:** One of the things I indicated in my morning remarks was that we were quite delighted that the first annual court services report is out and is on the Web site. That's very recent, and I would commend the use of that. It's there for the public and, of course, for all honourable members. In it you will see that in excess of 40 standards have been identified. It's very transparent about what the court services division is trying to do in terms of providing greater access, efficiency, timeliness, better information, better standards and so forth. We're quite delighted, but we're at the beginning of a very important process to better measure our performance. There will be a second report and a third report. Those standards have been come up with in conjunction with the judiciary in a broad dialogue within the court services division. We're very hopeful that they will inform this process of improving, measuring ourselves and providing measurements and results that the public can read, examine and challenge.

**Mrs Munro:** My final question: Given the work that is being done, how do you rate the achievement of reducing the backlog as part of your performance evaluation?

**Mr Segal:** I think, as the Provincial Auditor mentioned, it's a very important issue in terms of our challenges. It's something that I think all of us in the ministry have worked very hard on, and attorneys general past and the current Attorney General, in terms of ensuring that cases are heard on their merits and heard in as timely a fashion as possible. The issue of criminal offences, being

involved or tied up in a criminal offence, can be somewhat traumatic. All of our business lines are very important to people. In criminal offences, because of this constitutional ability to have a charge stopped without being dealt with on the merits, it's really important that we continue to challenge ourselves and look at improvements to our engineering system, measuring and results. It's right up there.

**Ms Broten:** My question is with respect to measurements. We've spoken a lot today about criminal law, and I wanted to speak for a minute, if we could, about measurements and information that might better support family law and child welfare cases. Obviously, because of charter challenges, we have a focus in our justice system on the need to have an efficient criminal process, but you need only sit in a courtroom for a very short period of time and watch the consequences of languishing child welfare cases and family law cases. I'm wondering if there are any specific initiatives you might be able to talk to us about—how we are going to measure efficiencies in those areas.

**Mr Segal:** I think you've touched upon a very important issue, which is the protection of children. It cuts across several of the ministry's functions: criminal, child welfare and family law, to name a few. It's very important that we look at this in an organized and holistic manner and look at opportunities to better serve children across the board. Many of the children are crossovers between one part of the system and another part of the system, as you well know and are working on as part of your current initiatives.

We have noticed that changes made to the child welfare legislation in recent years have placed some pressures on the system. If you look, for example, at the Ontario Court of Justice, we're now starting to see that there are in some jurisdictions competing requests, demands, from child welfare and the criminal system, which includes charges under the Youth Criminal Justice Act.

We have been in discussion to see if we can look at this as one group and to look at the pressures and bring together all of the people who might have some insights. To that end, as part of the summits that I referred to earlier, there is a child protection summit to bring together people from the child welfare area, the judiciary, the CAS units, the ministry and many other players to look at this emerging challenge. I think that just as much as we need to keep working very much ahead of the issue of criminal inventories and backlog, the same is holding true and holds true of the important goal of child welfare cases and the protection of children. There is a connection—there are many connections—and we have put in place an organization, a group with a desire of getting everybody contributing to the discussion and moving ahead at some joint solutions.

1440

**Ms Broten:** I just have one follow-up.

**Ms Paulseth:** Might I add one thing to the deputy's answer that we had touched on before?

**Ms Broten:** Sure.

**Ms Paulseth:** We prioritized the need for a consistent case tracking system, particularly with the child protection caseload in mind, because we did not have one consistent system in the province. We did start to implement the Frank system in October. We think that will help. That implementation should be completed by the end of this calendar year, and that will assist the groups in the initiatives that the deputy was referring to.

**Ms Broten:** My question is with respect to measurabilities from the perspective of complainants and victims coming forward through the court system. As we move forward and we talk about a backlog, we're often focused on the individual—as we would need to do so under the charter—who has been charged and that that moves through the system for their benefit. At the same time, are the measurabilities and effectiveness measures you intend to put in place going to examine whether or not the ultimate result is satisfactory to the complainant, the victim and society at large? For example, when you see dealing on the main charge and then the breaches of some restrictive order get dealt away, great, you've dealt with five charges, but you have a victim or a complainant who is unhappy about that circumstance because it's not a satisfactory result to her.

**Mr Segal:** That's a very interesting question. As you well appreciate, the decision as to whether a particular charge proceeds or doesn't proceed has to do with a number of factors. Those factors include, oftentimes, the strength of the case—they have to—the admissibility of the evidence and features such as that. Crowns, for example, as we all understand, are under a continuing duty to keep vetting the information to make sure that the strength of the case is there.

On the victim's end, it's very important to have a dialogue. For example, crown lawyers are there not to represent the victims but to represent the public, which includes the victims. It's critical that victims have the necessary information so that they have confidence in the administration of justice. Therefore, over the years, the ministry has devoted some of its energies, appropriately, to enhancing victim and witness services, to working with communities to better support victims and the like. That particular secretariat has pursued the issue of quality service and quality information to victims, working toward what are appropriate standards and goals to be met in terms of conveying information.

Not everyone may agree with the path of a particular case, but providing victims with the information and an opportunity for meaningful input and the like are things that we do measure in terms of satisfaction. We are committed to doing that, and we will try to keep working in that particular area.

**Mr Zimmer:** My question has to do with measurability and information management. The selection and implementation and the management of information management systems is hugely complex. Any organization often will come on the rocks just because of not selecting the proper information management system or

administering it properly, particularly a ministry that's as complex as your ministry, with multiple stakeholders and all kinds of factors that you can't really control.

What sorts of processes or attitudes do you bring to bear on this whole question of selecting the IT providers and the information managers? If they get it wrong or if the technical system is not right, it can't give you the information that you need in the whole system.

**Mr Segal:** I think that's a very good question. I'm not being facetious, but the Provincial Auditor continues to remind us of how important it is to select appropriate measurements, factors and results. We take the report seriously in doing that. We have moved toward an approach that involves all of the diverse users you've mentioned and brings them together so that suggestions can be made about common areas of interest, about what would be appropriate matters to measure and how it would be done respecting all of the stakeholders' issues, which include the diverse and important factors you've touched on, such as independence. Our approach is not to be internal and to pretend to be expert; we do pay attention, we do appreciate our work with multiple users to have stakeholder committees to get input before we come to conclusions about design, so we can get it right where the stakes, as you've touched on, are that important.

**Mrs Sandals:** We touched briefly, earlier, on the integrated justice project. I must admit, with my background, I tend to have a horror of megaprojects, because they often tend to collapse under their own weight. There was, I understand, \$21 million spent on IJP. Could you give us some understanding of what we actually got to show for that \$21 million as a province, as a justice system; not so much where we're going to go forward and do other projects as backfill, but for that \$21 million what did we actually end up with as deliverables?

**Mr Segal:** Mrs Sandals, as I touched upon earlier today, what I indicated was a significant number of activities that are underway at various states of completion within the ministry and particular divisions within the ministry. I'm not going to repeat them here. What I also indicated was that a notice of action had been filed in the courts and that discussions continue between EDS and ministries. In that respect, it would not be prudent for me to discuss something that was before the courts. So I very much appreciate the question, but because of the nature of those particular matters that I've outlined, I'm not able to assist you any further.

**Mrs Sandals:** So we might presume that what was delivered is, in fact, a matter of discussion.

**Ms Paulseth:** Yes.

**Mrs Sandals:** OK. Can I, then, go off on a slightly different tack. One of the things you mentioned in terms of technologies that do show some promise is the whole issue of video remand. The auditor has noted the issue of court security. I suppose part of court security is reducing risk; and having prisoners actually on-site is one way of reducing risk. I understand that there has been some resistance from defence counsels in some cases around using video remand. You do seem to have venues for

joint discussions. What is happening to encourage the use of video remand, in that it would have some helpful effects both on court security and the whole business of just trucking inmates up and down highways?

**Mr Segal:** With respect to something like video remands, time tends to provide some comfort. People are sometimes somewhat concerned about possible changes to the tried and true methods. After some initial resistance, I think getting to use the system and ironing out some of the bumps in the road from a technological point of view have made people feel more comfort. You have to ensure, of course, that there are opportunities for it to be done in a respectful way, that it's done so the quality of the transmissions is excellent, and those sorts of things, respecting solicitor-client privilege and the like.

1450

I think, at the end of the day, it's still a very human process. There would be some defence counsel who rightfully would see, for example, that a face-to-face meeting regarding an important discussion might be in order; and while video remand might be open to use, no one would say that in that particular case, it wouldn't be a good idea for counsel to meet face to face to discuss an important event or to get a meeting of the minds or to agree to cut down on the number of issues that need to be dealt with.

One has to bear in mind that there is this human element, but we are making great strides in terms of its acceptance. I think that's proven by the number of sites—in excess of 120, as I recall—throughout the province. We will continue to look at it to ensure that it does provide the kinds of efficiencies that might be helpful, including on issues such as security and cost and the like.

**Mrs Sandals:** Mr Chair, if the legal discussions around the IJP resolve soon enough, that might be something that the committee would wish to follow up on later, because we seem to have \$21 million that has disappeared and not a good sense of what we have to show for it.

**The Chair:** I think, as the negotiations or the lawsuit comes forward, those issues as to how much the government benefited will become clearer and probably under greater scrutiny than in most situations, because both sides will be putting forward what the value of services might or might not be. I wouldn't characterize the \$21 million as disappearing at this point in time. At least I think we should give the benefit to the conclusion of the process, and then make our decisions at that point in time.

Could I just ask one question as the Chair as we're wrapping up today? The youth justice program has done a great deal to alleviate some of the pressures on youth court. As I understand it, this is a program which puts the victim, puts the police, puts the offender in the same

room. Particularly with young people, it has had tremendous beneficial advantages in terms of recidivism and those kinds of things not occurring.

As I understood it, we were into most communities in southern Ontario. I want to ask a very, very parochial question as to when it is going to hit Lanark county, which is part of the area that I represent.

**Mr Segal:** As I recall, we have youth justice committees in a number of communities—about 22 communities. We have plans for some degree of expansion. There are many communities in the east region, where you come from, that have those particular committees. Lanark is, as yet, not one of them. There is some community interest that has emerged, I am informed, from that particular constituency. It will be evaluated in terms of our ability to go forward and community readiness, along with other interested communities who are all vying and seeking to look at that particular program or a variation of it or improvements to it coming to their community soon.

As I indicated in my opening remarks, the issue of youth diversion is something that we are looking at and will be looking at across the board, including these youth justice committees. While I can't give you an exact date, I note your personal interest, and I appreciate that interest on behalf of your constituency.

**The Chair:** If there are no further questions of the Attorney General or the Attorney General's staff, perhaps we can thank them. Thank you, Deputy. Thank you all for appearing today. We will take your words and produce a report, probably within the next two to three months, with regard to your response to the auditor's suggestions. We may in fact be in touch with you again with regard to the additional information which I asked you for before. If you could possibly provide that before Parliament resumes on March 22, that would be appreciated, and that would give us an opportunity to include it in our deliberations with regard to what we've done today. If there's any further expansion on any of the information which you have provided, I also invite you to include that expansion to us, and possibly if it can happen before March 22, that would be most timely for us.

To the other members of the committee, if you would like to stay for a few minutes, and then we can perhaps talk briefly with our researcher to give him some direction at this point. I hope that meeting would not take more than 15 or 20 minutes. I'll give each member the opportunity to say something to the researcher to give him a little bit of direction as to what he might include in his report.

**Mr Segal:** Thank you, Mr Chair. Thank you, committee.

**The Chair:** Thank you.

*The committee continued in closed session at 1456.*



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## **Legislative Assembly of Ontario**

First Session, 38<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Première session, 38<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Tuesday 10 February 2004

# **Journal des débats (Hansard)**

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Tuesday 10 February 2004

Mardi 10 février 2004

*The committee met at 1041 in committee room 1, following a closed session.*

2003 ANNUAL REPORT,  
PROVINCIAL AUDITOR  
MINISTRY OF CHILDREN'S SERVICES

Consideration of section 3.02, children's mental health services.

**The Chair (Mr Norman W. Sterling):** Good morning. I look forward to hearing from the new ministry. I'm not unfamiliar with the new deputy, whose retirement party I attended not too long ago. I was saying to the committee in the closed session that I'm going to demand back my portion of the retirement gift that you received, Deputy. I understand that you can only be here for a period of time and then you will be leaving, but the committee thought it was important you come and present your views, even though you've only been in this post for a very short period of time. So, Ms Lang, if you would like to make your introductory remarks and introduce the people you have with you.

**Ms Sandra Lang:** Thank you, Mr Chair. I am delighted to be back. It's a very exciting opportunity to be part of a brand new ministry. What I would like to do this morning is take a few minutes and bring the committee up to speed on what's happening with the new ministry, do a bit of a contextual piece for you, and then I will turn it over to Peter Rzakki, who is our ADM for integrated services, who will talk to you specifically about the actions taken to date in response to the auditor's report for children's mental health. I also have at the table Heather Martin, who is our director of policy, and Dan Lafranier, who is our current regional director in northern Ontario, but at the time the audit was being done he was the director of the program management unit in the ministry.

I would just like to give you a bit of a context with what's happening with the new children's ministry and bring you up to speed on the developments to date. Before I do that, though, I should also say that we are very pleased to have the benefit of the auditor's report. We always welcome the kind of input and value that the auditor brings to an examination of our service system. I'm confident that we will respond in a way that will deal with the concerns that have been raised, and I understand they've been raised a couple of times. I'm hopeful the

new ministry will take this one on as a significant opportunity to deal with the kind of change we believe is necessary for the service system in the province.

Let me just first of all talk about the new ministry. As you're aware, it was set up back in late October. The ministry is intended to provide a focus inside government and outside government for all children between the ages of zero and 18. It is dealing with a wide range of issues and concerns for our children, but we are also taking a strong look at how we provide the framework that allows the government to provide a direction for children in the province that allows them to succeed.

The tack that we're taking at the moment is to take a look at the developmental stages of children's lives and determine what kinds of services can be provided to help parents and families move through those various developmental stages for children as they move through the transitions. We're dealing with the transitions from birth through to the early years through to being ready to learn in the education sector, supporting them as they succeed in school and the transition to high school and then the transition to independence, whatever that may be, whether that's post-secondary education, apprenticeship or moving into the world of work. We see ourselves putting together a policy framework and a set of directions that allow the system out there to respond to those directions, and making sure that our young people have successes and move through those transitions.

We're also going to be focusing a significant amount of time and energy on outcomes. We want to be able to determine what it is that will allow young people to succeed, what the outcomes are that need to be measured. We want to put in place a system to be able to evaluate in an ongoing way whether our services and the response to children's success are in fact in keeping with the outcomes that we've set for ourselves, and report to a public process in a regular, ongoing way, because we believe that we need to learn about what works out there. We need to use the benefit of research to tell us what is making a difference in the lives of children, and in order for them to succeed, we need to use that research to target our resources and our policies and our priorities.

Where we are at the moment is very developmental. We're in the early stages of setting up a new ministry. We have put in place some special resources to take a look at the kind of organizational design we need to carry out the mandate of the new ministry, and focus on a strategic plan. We are spending a fair amount of time

taking a look at the strategic directions for the new ministry, trying to shape a long-term vision and set up priorities for the new ministry. The intent would be to think about the things that need to be altered in the way in which services are provided out there now to make it much more seamless for parents.

I think many of you are probably aware that parents in this province have a hard time working their way through the service system. The service system is made up of a lot of different sectors: health, education, social service, recreation, just to name a few. It can be a bit of a maze if we don't find a way to work through, in a much more integrated fashion, the approach to service delivery. So I think a key mandate for this new ministry will be to take a look at those service systems out there and try to find the structural changes necessary to help parents work their way through the various service sectors.

We're also in the throes of working on the transfer of a number of programs and services into the new ministry at the moment. We have completed the transfer, at least in the legal sense, for the social service components of the children's ministry. So we are now dealing with child welfare, children's mental health, daycare, children's treatment services.

We are actively engaged in discussions with our colleagues over at the ministry of corrections for the transfer of services for youth justice, and that will be coming very soon to the new ministry for young people between the ages of 12 and 17.

We're engaged in a very detailed dialogue with our colleagues at the Ministry of Health at the moment to move a number of programs and services dealing with children in the health sector so that we will then have the basis of a foundation of significant programs and services that give us the opportunity to start taking a look at how we begin the process of integration and looking at bringing those various services and components together in a way that makes sense for parents and families, in a way that allows us to ensure that there are sufficient strategies available to help get the outcomes that we want for our children in the province.

We're also in the throes of doing a series of discussions. The minister and I and others are spending a lot of time meeting with people across the province, talking with stakeholders, talking with parents, talking with people who have an interest in children—which, in our view, is everybody. We think that everybody should have a stake in how our children do. So we're spending a lot of time and energy at the moment getting input, trying to hear from parents, trying to hear from service providers, trying to hear from the other sectors about what needs to be tackled as we think about the long-term directions for shaping the way in which services are provided to our children and to our families. That will be going on for the next two or three months, and then we hope to be able to complete a longer-term strategic plan sometime in the late spring, early summer.

In addition to all of that, as we think about the framework that will guide the policy directions and the

priorities for the new ministry, we're also going to be spending a fair amount of time and energy thinking through all of the infrastructure pieces that deal with accountabilities, funding frameworks and ways in which we monitor services. I think for the purposes of this committee, it's fair to say that the ministry is mindful of the need to take a look at the longer-term underpinnings of how services are funded, how services are accounted for and how we measure the outcomes for the way in which services are provided in the province. We have not missed the need to take a look at that in a very thorough and comprehensive way.

We're excited about the possibilities of a new ministry. I think it's fair to say that it's early days, and there is a fair amount of work yet to do to get the ministry fully in swing, to get the directions finalized and the policies and perhaps legislative change, if that's part of the requirements, well in hand as we shape the directions.

I'd like to now just turn it over quickly to Peter Rzakki and ask him to bring the committee up to speed on what we've done in terms of the actions, following the auditor, as it relates to children's mental health.

1050

**Mr Peter Rzakki:** Mr Chairman, members of the committee, thank you for the opportunity to appear today.

**The Chair:** Peter, just before you begin—Ms Lang, are you going to stay? When did you want to leave?

**Ms Lang:** I'm quite prepared to stay for at least another 20 minutes.

**The Chair:** I just wondered. I didn't know if committee members had any questions of you. Do you want to do that first, and then you can be excused?

**Ms Lang:** That would be wonderful, if that's possible.

**The Chair:** OK. Are there any questions of Ms Lang? OK, that's fine, then. Go ahead, Peter.

**Mr Rzakki:** Thank you for the opportunity to appear today to respond to the Provincial Auditor's report.

I am pleased to be here to report on the progress we have made to improve the administrative systems and processes that support our accountability relationship with the transfer payment agencies that deliver children's mental health services.

I am speaking to the Provincial Auditor's report and updating the committee on the steps we have taken so far to improve our systems and processes to address the auditor's concerns.

We have indeed taken some steps toward improvement. We've implemented several initiatives since the 1997 audit to change and improve accessibility, flexibility and responsiveness in the delivery of children's mental health services.

With respect to the quality of services we provide and the issues that the auditor has raised in his report in 2003, our new ministry, as the deputy has indicated, is focusing its efforts on outcomes and evidenced-based clinical practice. The auditor's findings support our decision to undertake a more detailed review to assess the effec-

tiveness and efficiency of children's mental health services.

The ministry will also be developing key strategic policy directions—new ones—within a broader policy context for children's services, as the deputy has outlined. Our review of children's mental health services will confirm the outcomes of services, as recommended to us by the auditor; will verify the nature and scope of children's mental health services in a much more clear way, as recommended by the auditor; and will assess the overall effectiveness and efficiency of the delivery of those services as it relates to the roles and responsibilities of our transfer payment agencies.

We plan to develop key strategic policy directions in the context of the overall broader policy for children's services. These policy directions will confirm the government's expectations of children's mental health service providers, identify core children's mental health services and establish a common policy platform for all children's mental health services currently being provided by different ministries.

We have implemented standard intake and assessment tools for children with social, emotional and behavioural problems. These, we believe, have made a significant contribution to the quality of services being provided by our agencies. These tools provide agencies with the ability to track outcomes for individual children and to use the aggregate data to support planning and service delivery.

A new centre of excellence for child and youth mental health at the Children's Hospital of Eastern Ontario is being established. The centre of excellence will be a leading resource for program innovation, research, teaching and knowledge transfer. It will act as a clearing house for the dissemination of best practice information across the province and beyond. By undertaking a lead role in evidence-based clinical research and knowledge transfer, training and the evaluation of innovative approaches in treatment and intervention, the centre of excellence will help to build provincial capacity in the children's mental health sector that does not now exist in a coordinated fashion.

With respect to waiting lists, the ministry acknowledges that waiting times for children's mental health services are lengthy for some children and families in many parts of the province.

Since the 1997 provincial audit, the ministry has implemented a number of initiatives to help agencies prioritize services for children who need them the most.

In 1997, an initiative undertaken by the Ministry of Community and Social Services entitled Making Services Work for People was released to agencies. This process and framework were developed in consultation with agencies across the social services field. This framework outlined several specific steps to improve services for children and resulted in locally based approaches designed to address communities' specific needs—the needs, in particular, with respect to the clients and children that community agencies were serving.

As well, we have implemented standardized intake and assessment tools like the brief child and family phone interview and the child and adolescent functional assessment scale. These were implemented in the year 2000 to help agencies identify children whose needs were most complex and who needed services promptly.

As part of our policy work, the ministry will begin to develop policies that provide better direction to agencies about access to services. This is an important issue raised by the auditor in his most recent audit and had been raised in previous audits as well. We will also continue to work with all service providers to improve and better coordinate services for children with social, emotional or behavioural problems to improve access so that community services can be prioritized for children who need them most.

We believe that the integration of children's services across all sectors will improve access for families and children in need. Our review of children's mental health services and the development of strategic policy directions for service providers will help to better identify core services and provide agencies with direction on prioritizing service needs.

With respect to performance measurement, the ministry fully agrees that performance measures are essential to support good decision-making, both at the government level and in terms of decision-making at the agency level.

To that end, the ministry has begun to introduce a ministry-wide strategy to focus on outcomes for children and indicators that reflect the effectiveness of our programs. The deputy spoke briefly about that initiative now underway.

The ministry must balance the requirements for information about the effectiveness of services with the inherent sensitivity and confidentiality of this type of personal health information.

Our review of children's mental health services will also allow the ministry to better define outcomes for children in the mental health field and assess the overall effectiveness of our system. The ministry will continue to develop outcome-based performance measures and use these to guide and direct our agencies in the provision of services.

With respect to agency funding requests and approvals, the auditor's report indicates the work and recommendations he and staff have undertaken in this past audit. We agree that detailed information is necessary for program budget submissions and that we require further detail in the submissions made to us by our agencies.

Through the annual transfer payment budget package, the ministry will reconfirm its requirements for agency funding requests and approvals. There are already a number of ongoing improvements to the transfer payment budget package that include a continued emphasis on contract management, yearly training for regional office staff on the use of the budget package, accrual accounting training and financial management.

Implementation of strategic policy directions for children's mental health services will help to strengthen

our ability to monitor our expectations associated with the funding we provide to our agencies.

With respect to the annual program expenditure reconciliation process, the ministry recognizes the need for strong financial accountability processes and has taken steps to improve these processes.

**1100**

The ministry has clarified the rules for applying financial flexibility, and improved its reconciliation form by providing a list of the most common ineligible expenditures.

To improve the APER review and approval process, the ministry has revised the APER form, provided regional and corporate office staff with training on how to use the APER form more effectively. The ministry continues to monitor the APER process by collecting data three times a year. The government's recent change to accrual accounting will also positively impact on the APER process.

With respect to surplus recovery, the Provincial Auditor has recommended that the ministry not enter into service agreements that span two fiscal years. The ministry acknowledges this policy requirement and has reconfirmed that agreements spanning two fiscal years require the identification and recovery of annual funding surpluses.

We have also added the rules for applying financial flexibility to the annual program expenditure reconciliation form, and have clarified these requirements in the APER instructions.

With respect to our information systems, the Provincial Auditor recommended that the ministry confirm that its management information systems provide better and more sufficiently the detailed, relevant and accurate information that can help the ministry determine whether services are provided by transfer payment agencies and whether these services are effective and represent value for money spent.

The ministry is committed to having information systems that determine the effectiveness and value of services provided by our agencies. As the deputy alluded to earlier in her remarks, the need to look at investments in information and information technology is critical if the amount of change and potential restructuring of the children's services system is to be undertaken in a way that we can monitor, assess and evaluate.

The ministry is implementing improvements to our management information system to allow for the development of data quality assurance tools and methodologies, and refinement to the transfer payment budget package to ensure clarity and consistency of the data elements and definitions.

We are also taking steps to modify our databases so that information is sufficiently detailed, relevant and accurate. By September 2004, the ministry will:

- Complete an electronic upload file that allows for the automated entering of data from service providers to our service management information system;

- Develop data quality assurance tools and methodologies to ensure the data inputted into our service man-

agement information system is of a degree of quality that does not require additional time-consuming validation;

- Continue to refine the transfer payment budget package to enhance the clarity and consistency of data elements and definitions so that agencies across the province are providing us information with an agreed-upon set of definitions, and so that the data we collect can be used to assess the impact of our services, not just locally or by agencies in particular, but at the level of the province;

- Communicate to regional offices the business practices that govern the management of our transfer payment data in our service management information system;

- Prioritize and execute system changes; and

- Make improvements and additions of new functionality to ensure that, as I indicated earlier, our IT systems have the capacity to provide us, as policy developers, and those of my colleagues in the region, as program managers, the information we require to understand the quality of services that are being provided, to understand where there may be gaps and to be able to work with the government to develop and seek out improvements to those services.

I can assure members of this committee that we will continue to improve our processes and systems to support effective, value-for-money programs and services at the community level as our new ministry evolves.

Mr Chairman, thank you for the opportunity to respond to the Provincial Auditor's report. We'd be pleased to take questions at this time.

**The Chair:** OK. I'd ask Dr Qaadri to go ahead first.

**Mr Shafiq Qaadri (Etobicoke North):** Thank you, Mr Chair and fellow members of the committee and ministerial staff. Good morning to you all.

First of all, I think we detected the enthusiasm and energy from the remarks of Deputy Lang, but with your permission, I would like to—it reminds me of a particular quotation or saying, and that is, what's past is prologue. What I mean by that is I'd like to give the members of the ministerial staff here a little bit of opportunity to expand on what I think is a very historic commitment and initiative that's been made by the government of this day, and that is, to create for the first time in the history of Ontario, in the history of this province, this new Ministry of Children's Services. I was wondering if Assistant Deputy Minister Rządki—and the staff here—would be able to perhaps share with us some of his thoughts on what has gone on previously and what he envisions going forward.

In particular, I was always struck in the many briefings I had the privilege to attend in the past that, for example, things seemed to be not integrated, not fully directed, not accorded the highest priority, perhaps underserved, not capitalizing on the full synergies and frankly the considerable talent and experience that is displayed by the public service.

In particular, I'd like to quote for the members of this committee and for you, Mr Chair, what I and the gov-

ernment consider, and certainly the ministry considers, to be one of the master reports that was filed, and that is, of course, the McCain-Mustard report, *Early Years Study: Reversing the Real Brain Drain*. One of the recommendations in the final chapter was, "To ensure there is a strong voice around the cabinet table for early child development issues, and to ensure there is a provincial minister with the responsibility for leading the development of the early child development and parenting program across Ontario, we urge the Premier to" create a minister responsible for children.

I think there are certainly elements to be hopeful about, and the enthusiasm and energy that I spoke about. I'd like to ask very specifically, Mr Rzadki, how do you feel that this is an event of empowerment to help you execute a more coherent vision, integrate your policy framework, better the stakeholder relations and ultimately better serve the 2.9 million children in Ontario between the ages of zero and 18, those at risk and those not?

**Mr Rzadki:** Thank you for that question, Dr Qaadri.

**The Chair:** Just before you answer, I think it's important for those who might be listening to understand that Dr Qaadri's enthusiasm results not only from his being a member of the Legislature but he is also the parliamentary assistant to this particular ministry and therefore he is, no doubt and naturally, an advocate for this particular ministry.

**Mr Rzadki:** In response to your question, I'd like to just echo and perhaps expand on some of the comments made by Deputy Minister Lang. The creation of the children's ministry, the first ever in this province and the first new ministry in many decades, is indeed an exciting prospect for children, who depend on the province of Ontario for services to assist in their development, in their readiness to learn, in their ability to learn through school and to develop as youth and young adults.

The reason there are opportunities created by the creation of a new ministry is that for some time it's been understood that ministries at Queen's Park—at headquarters and in the regions—need to work better to direct our children's services system, which crosses the responsibility lines of many ministries. We need to work better to direct our agencies and providers to work better in the community, to support the very complex needs of some children and the universal needs of all children. So the opportunity to bring into one organization services that relate very much together in the community is certainly one we are looking forward to and, as the deputy indicated, working hard to achieve.

An example of where there needs to be greater policy and planning synergy at the ministerial level is the example of children's services with respect to youth who are in conflict with the law. Many of those children require children's mental health services, many of those children may have an experience within the child welfare system, and in order to understand the complex interdependencies of those three children's services systems, bringing together those services and the funding that

relates to them into one ministry creates a positive opportunity.

**1110**

Another important benefit of bringing together services that interact or relate to children in the community is the prospect of examining how government funding, broadly, for children's services is now aligned by ministry, by agencies and by sector, and to take a look at whether or not there are alternative ways to allocate that funding through new or improved delivery systems so that parents don't experience the children's services system to be one of disintegration but experience a system of services that is easy to access and that provides continuous services to their children; that do not, as is the case today, provide for children periods of service and periods of waiting time.

Those are the things that we believe have been raised by experts, analysts and critics of governments in the past. There have been issues with respect to integration that have been around for quite some time. I think while we're in the early stages of the creation of the ministry, the opportunity to work more closely with staff in our regions, and corporately, who also serve children, the opportunity that that might mean we'll all do a much better job of ensuring our agencies serve those children much better is a very positive thing. As we understand it, because we are taking a look at the experience in other jurisdictions, it is a step that has been taken by other jurisdictions to the benefit of children and to the benefit of a more efficient and effective children's services system.

**Mrs Julia Munro (York North):** Thank you very much for bringing us up to date on some of these initiatives. I think all of us share the interest, obviously, in the well-being of children across the province. I don't think we'd be here if we didn't.

I have a couple of questions that relate to some of the issues that are in the auditor's report that speak to dilemmas we face. This has to do with the question of understanding the need for accountability measures, as has been suggested, but where the balance lies between creating the appropriate accountability measures and the diversion of money from front-line service to administration. In a number of the comments you've made, you've talked about the need for accessibility, formalizing intake mechanisms and things like that. So I thought you might have a sense of what kind of balance you are looking for when you start looking at an agency in regard to that increased accountability mechanism and the kind of administrative burden which translates into dollars in terms of front-line services.

**Mr Rzadki:** Thank you for the question, Ms Munro. I will make a few remarks in response to this. I might ask my colleague, Dan Lafranier, also to provide some perspective from his experience, working much more directly with children's mental health agencies.

One of the many key themes in this most recent auditor's report certainly points us to the need to bring a much more outcomes-focused orientation to the services

we provide. We intend to do that with vigour across all of children's services and we intend to do that, with respect to children's mental health services, as part of a broader review of children's services. We do intend to undertake this year a review of the children's mental health system so that we can better understand the accountability balance that is out there; so we can better understand what we need to do from a policy and funding perspective to help our agencies who are primarily tasked with the responsibility to manage services, make clinical decisions, manage the resources they have to meet the needs in their community; so we can better understand what we can do to help them do that better.

It has been some time since the ministry has had a serious look at exactly what services are being provided agency by agency and rolling those up to paint a picture for ourselves of the services provided provincially. It's difficult for us at this time to, for example, know where every gap in service is and understand the reasons why in any particular community there are waiting times. So we need to deliberately, in short order, arm ourselves, prepare ourselves with that kind of information. That's the side of accountability that I think is on the ministry's side: to understand much better, as the auditor has pointed out, what is happening in terms of capacity and to lay out for agencies in a much more clear way what our expectations are.

On the side of the agencies, beyond the contractual obligations and processes we have in place to fund agencies—their primary responsibilities, as I've said, are to manage the funding and resources they have the best they can to meet the service demands in their community. This places a critical responsibility on them to ensure that wait times for children most in need are minimized. We as a ministry have provided community processes and intake and assessment tools that can help agencies perform those functions better, and we look to further discussions with our system to understand what more we can do. But the role, in terms of a balance, is on the agencies to make those clinical decisions, to use the tools they have and we have to make those decisions more promptly, with a view to ensuring that the resources that are being provided to children's mental health are being provided to the children most in need.

**Mr Dan Lafranier:** Thank you again for the question. Just to add to what Peter was saying, I think the ministry wants to be satisfied that the resources we have available go into services for children and families, and that only where it's required do we support infrastructure and administration in agencies. I think there are a number of strategies we've used in the past and will continue to use to try to achieve, as you say, that compromise.

One of them is ensuring that we're clear on what it is the ministry really needs to know, so we're only asking what is really necessary to avoid duplication of effort and work at the agency. That speaks to the auditor's report in being clear about what our expectations are, that the agencies understand, and are they trained in providing that type and level of service? Have we provided the

agency with clarity around the use technology can have within agencies in providing information and reducing effort so that those resources can be devoted to service for children and families?

Particularly with smaller agencies, which are more of an extreme dilemma, they have a critical mass and you need to make the decision around how small an agency can be and still provide an effective service across the province. In those situations we're looking at providing agencies with opportunities to partner with other agencies so that smaller agencies can work together around administration and use of opportunities like that.

These are the types of conversations we have year after year with agencies when we settle their service contract: Are we satisfied that we're asking for the absolute required information to minimize duplication of effort? Are we providing good training and support to agencies around what it is we're looking for? Are we satisfied the agency has sufficient infrastructure to meet the expectations we have in giving us the information we need so we're satisfied we're getting the services we're looking for? Are we satisfied the agency is taking advantage of local opportunities to partner with agencies where they have similar problems and issues? It speaks to the earlier comment around the community as a system of partnerships. Those relationships are important and they need to be healthy in order for smaller agencies to survive.

1120

**Mrs Munro:** Thank you. I'll pass for now and come back.

**The Chair:** I have Ms Broten, Mr Arnott and Ms Martel on the list. Since the NDP haven't had an opportunity, I'll call Ms Martel at this time.

**Ms Shelley Martel (Nickel Belt):** Thanks, Mr Chair. Sorry, the rotation is a bit different than what I'm used to in this committee.

Let me make some comments and then I have a question. I preface my remarks by saying I appreciate that it was a different government in place at the time of the audit, but let me make a couple of comments.

First of all, thanks for being here. Peter, I heard you say many times, "We will, we will." Except if you look at the auditor's report, he was really clear. He said, "Our conclusions and findings were of particular concern because many dealt with issues we had previously raised in our 1997 audit.... Although the ministry agreed with the recommendations in that audit and agreed to implement the necessary corrective action, its progress has been less than satisfactory."

There is a chart on that page with seven recommendations made by the auditor, three of which were not implemented at all, three that were noting some progress, and one improvement. That was it. Then you talked about some of the actions you had taken to respond, but I note that the actions you talked about—Making Services Work for People or the assessment tools—were changes that were already in place before the auditor did his most recent audit. So even though those things were in place, I

don't think he was very supportive, or let me say that the report was still fairly critical of the ministry in terms of its responses and its understanding of the issues.

The second problem I have is you mentioned, on a couple of occasions, that you were giving policy direction, tools and procedures to the transfer payment agencies so they could prioritize children in need and make sure those children who had the most needs got the services first. In defence of the transfer payment agencies, I'd have to argue that I don't think they need any more direction about how to prioritize children. They have been juggling, trying to meet the needs of children for way too long. Their argument would be they need some increase to their base funding, and they need a budget that's actually based on needs in order to not only serve the children who have the most needs but get rid of the waiting lists entirely.

In that regard, what I'd like to know is, what specific actions has the ministry taken since the conclusion of the auditor's report, which would have been in March 2003, to now, which is almost a year later? What are the specific actions that the ministry has taken to respond to the most recent finding in this report?

**Mr Rzadki:** Thank you for the question. With respect to, first of all, the improvements that the ministry had undertaken following the 1997 audit, I think it's fair to say that the Making Services Work for People process was only just rolling out at the time of the audit and has really represented a significant change in the way children's services are planned, coordinated and delivered in communities.

We believe that is a significant improvement to have undertaken with our communities and our agencies. Many of the benefits of that framework are evident in your observations, Ms Martel, that agencies now know well how to prioritize, plan and work better with their colleagues and colleague agencies in their community.

We also believe that the introduction of singular screening and assessment tools, in an area of children's services that for a long time was characterized by wide use of varied screening and assessment tools, is a significant accomplishment. While it was referenced and reflected in the auditor's report, perhaps we feel that the accomplishment in bringing the research and assessment clinical community together to agree on a tool that really does significantly, in a consistent way across the province allow our agencies to approach the critical needs of children in their community and make determinations in a timely way as to how those needs can be met—we think those are fairly significant accomplishments.

I agree and acknowledge, as we have in our comments, that recommendations of the auditor in the 1997 report have not all been addressed and it is our commitment, on a going-forward basis with the creation of the new ministry, to use those findings and recommendations as bearing points for a broader children's system change. It's important for us to acknowledge that these are findings and observations that have value regardless of the type of children's service being provided. To primar-

ily be more clear about outcomes and to primarily seek out clinical and support and service practices based in evidence is a significant change and that we are committing on a going-forward basis, I'll admit, to use those as guiding principles is significant. We believe as our plans to bring an outcomes-focused and an evidence-based practice—as our plans to bring those approaches to the ground develop, we think they'll have significant benefits on how existing services, existing resources in the children's services system are being provided.

With respect to the question of capacity and the alignment of resources to need, we are aware as a ministry of submissions made by agencies every day, every week, every month, and those made on a more annual regularized basis by Children's Mental Health Ontario, an association that represents many of our service providers, that speak to the question of the pressures that agencies providing children's mental health services are facing with respect to budgets and their capacity. We're aware that agencies in an ongoing way are making determinations about their capacity to serve their populations, and they do that by realigning continually the kinds of programs they have to offer so that they can reach the most in need and the broadest possible number of those children.

With respect to future funding, I cannot provide any indication of the government's ongoing deliberations about its budget. I know that the minister, as she meets with key stakeholders and service providers in this sector across the province, will have an open ear to the issues raised with respect to waiting times and waiting lists and funding, and that as she embarks on that discussion and as the government invites all Ontarians to have a role in shaping the upcoming budget, considerations such as those brought forward in the past by children's mental health service providers and associations will form part of what the government considers in the development of its budget.

**Ms Laurel C. Broten (Etobicoke-Lakeshore):** I think, as we've sat and listened to the ministry speak, we're faced with a clear indication of the massive challenge you face as you move to outcomes-based analysis when we can really focus on what children need to succeed. I commend you for that and I wish you good luck on that massive project.

**1130**

For those of us who have a chance to speak to folks in our constituencies on a regular basis, the challenge we'll face over the short term is both juggling immediate needs—folks who come into my office and their children need mental health services; folks who come into my office and their children need support through various therapies available for autistic children. In a long-term plan we can move forward to a greater examination, and we absolutely must, and we must be brave to do that and look at how we can do that in the long run. I guess from the perspective of our analysis, we also want to look in the short term at how we are we going to move forward with some of these issues right now and combine that as

part of a long-term plan. I guess I raise with you, what is your plan specifically to deal with the immediate needs in communities and juggling that as part of a greater analysis?

**Mr Rzaccki:** Thank you for the question. In terms of the immediate needs of children, in-year with the budgets we currently have, the primary responsibility through the contracts we have with our agencies is with the agencies to ensure that in a world of fixed or limited resources, the children who are most in need are getting the services they require. We have found that that isn't always the case, for reasons not particularly related to funding, but related to relationships in the communities between various programs and lack of integration between, for example, hospital-provided children's mental health services and those provided by our community agencies. The disintegration or lack of coordination is often a barrier to ensuring that services get to the kids in a prompt and immediate way. Certainly, as we begin to develop our going-forward plan—and there will be long-term elements to that plan and there will also be short-term goals for those plans—the experience we now have in providing services to kids will certainly inform how we move forward. This will be true with respect to the range of children's mental health programs and services that we support, and those would include those with respect to children with autism.

**Ms Broten:** Just one follow-up question: I wonder if you see a role that the ministry can bring in terms of the transfer agencies being assisted in innovation, in terms of new ways to provide the services, and if you see at all a role that the ministry can bring to bear in that regard.

**Mr Rzaccki:** Certainly the ministry has in the past worked with our delivery system to bring about innovation. Investments in recent years in the field of telepsychiatry have brought significant benefits, we think, to children with mental illness and mental health needs in rural and remote communities through very innovative approaches; approaches that involve the psychiatric counselling over video and telephone technology. Those are innovations that require investments.

I think there are also innovations that happen more out of the need to break down silos, not thicken them but actually break them down. There is some work underway, for example, in the southwestern part of the province involving our regional office, but led by and large by providers of children's mental health services in hospitals and schools and community agencies to innovatively look at their population, the needs of their population and to work out community by community in that region roles and responsibilities in terms of responding to the various gradients of need. That's innovative. It's innovative in part, the ministry will admit, because there hasn't been a clear outcomes-based policy direction from the government and there has been a need for that community—and this would be a need across all communities in the province—a need in particular for that community to better coordinate its resources so that there is an ongoing innovative look at children who are in

crisis who are not now getting services and supports and can stand a better chance of doing that.

**Mr Ted Arnott (Waterloo-Wellington):** Thank you very much, Mr Rzaccki, for your presentation. On behalf of the Conservative caucus, I want to express the appreciation of our members for the work you're doing as you set up this new Ministry of Children's Services. I was impressed by the deputy minister's presentation today. I realize that there are probably considerable challenges that members of the Legislature aren't aware of when you're trying to build a ministry from scratch, but we do appreciate the work you're doing.

We're here today because, of course, the Provincial Auditor identified some areas with respect to service delivery and accountability for service delivery of the previous Ministry of Community, Family and Children's Services. I know you're taking that advice and you're endeavouring to respond to it, and we appreciate the information you've provided.

One of the government members, Dr Qaadri, talked about the fact that this is the first Ministry of Children's Services, and I would point out to committee members who may have forgotten that the former government appointed the Honourable Margaret Marland to be the minister responsible for children, consistent with the recommendation of the Mustard-McCain report, the Early Years. Mrs Marland did good work in this respect during her tenure of some two years as an advocate for children's services within the government. I think that has to be pointed out. I believe this is the first full-line ministry that has been created for children's services, but certainly Mrs Marland had not a full-scale ministry but a secretariat that was engaged in the same kind of work that you're doing today. I would expect and hope that your work can be guided to some degree by the work that has already been accomplished in that regard.

One idea that has come to mind, just as I've been sitting here listening to the discussion today, is in terms of accountability for the money that's spent and the services that are provided. Most of these community agencies, if not all of them, the 250 that we fund, have boards of directors, I would assume. Peter, is that correct?

**Mr Rzaccki:** Yes, that is correct.

**Mr Arnott:** To what degree are we working with the boards to make sure that their effectiveness is enhanced going forward in terms of accountability? Do we have any training for prospective board members who are coming on as directors of these community agencies? They have an important responsibility, I know, to maintain these agencies and to ensure that the agencies are as effective as they possibly can be, to ensure that services are being delivered in a timely way, to ensure that money is being well-spent. These agencies are not just accountable to the province, they're accountable to their boards of directors. What are we doing in that respect to ensure that there is more local accountability?

**Mr Rzaccki:** I appreciate the question. Thank you very much. Indeed, if I might just reflect on the period of time

during which Minister Marland was heading up initiatives for children, she undertook an intensive review of children's mental health services. I believe in the summer of 2000, 1999-2000, which ultimately guided and underpinned the government of the day's decision to invest in four key areas, which we can speak a little bit about perhaps later. But these were enhancements to intensive children and family services, investments in telepsychiatry, investments in mobile crisis units and important investments, as we've talked about, in intake and assessment tools.

With respect to board accountability and the support the ministry provides, I will ask Dan Lafranier to provide some comments there. I do know that associations of children's services providers also invest in programs that support their boards of directors, their members, and I think that's a reflection of the importance that agencies and their associations place on the quality of decision-making that boards of directors need to be prepared to make, particularly with respect to the provision of critical and important mandatory children's services. I think it's an ongoing part of the relationship between the ministry and its regional offices and the boards of our agencies to be monitoring board capacity and assessing, through the services that are being provided and the decisions that are being made, the needs of each board and agency to ensure that the capacity is there to actually deliver the services and meet the needs of the population.

I will ask Dan, though, to fill you in on other initiatives that we may be undertaking to help in that regard.

1140

**Mr Lafranier:** The ministry's regional office, while its day-to-day working relationship with the agencies is primarily through its executive director, does maintain regular contact with the board of directors. We have a presence at their board meetings, in terms of support there. We have visited all the boards and shared with the boards the accountability framework for the ministry, outlining what the ministry expects in terms of its service contract, its membership, how they operate, that type of thing. That has been consistently delivered across the province, just in terms of showing the ministry's consistent practice. Whether you're a small board or a large board, we have similar expectations.

The annual service contract is another mechanism that the ministry uses to formally sit down with the board and go through contract expectations so the board is familiar with what the agency is being contracted for, actually formally signs off as part of that service contract that it's aware of its responsibilities and accountabilities. We have built mechanisms in place that give signals to the ministry that the board is a "healthy" board.

Throughout the year, there are often opportunities for the ministry staff to attend board meetings just to stay close to the board conversations and give them whatever support they require. But it is up to a board, in terms of their own orientation. The support that we provide is tools, processes. As Peter was saying, some of the associations have board orientation sessions. It's our expectation that they would have that in place.

**The Vice-Chair (Ms Julia Munro):** Thank you. I'll move to Mrs Sandals.

**Mrs Liz Sandals (Guelph-Wellington):** I'm delighted that we have a Ministry of Children's Services and that we're able to talk about children's mental health issues today, because certainly in my experience that has been a big issue in my community, and certainly an issue that has been underserved.

One of the things I've noticed as people come in to talk to me in my constituency office is concerns about a lack of consistency. I know that that's an area the auditor has talked about—a lack of consistency in two ways: (1) a lack of consistency in terms of what programs are available as you move from community to community; and (2) a lack of consistency in terms of what programs are available as you move from one mental health issue to another mental health issue, that, depending on what the child's particular issue is, you may or may not be able to get services in the community.

In my community, I would hear from people who are having to go to Peel or Toronto or Hamilton, even for initial assessment. I would hear from parents who are quite aware that the same agency, if they lived in Kitchener-Waterloo, would be able to give service, but they live in Guelph, and if you live in Guelph you can't receive service. So even within agencies, there's a lack of consistency in the service that's provided.

I hear from my family in children's services that they're running into more and more instances of parents who, out of the frustration of not being able to deal with the children, are essentially handing the children over to family and children's services. I certainly know that the school board locally has worked with family and children's services on a number of cases to expel quite young children from school because it's the only way to legally put the pressure on to get children into residential treatment programs. So there's a whole range of issues around consistency, and they're geographic as you move from issue to issue.

We've talked a lot about standard intake and assessment tools. We've talked a lot about standard performance measures. We've talked about the auditor noting whether these things are seen as mandatory or optional when you move out into the agencies. How do you see this all fitting together in tackling what I know is not just a consistency issue in my jurisdiction, but is a consistency issue throughout the whole province? How do you see this puzzle all fitting together? I quite admit it's a huge, complicated problem.

**Mr Rzakki:** Thank you for the question. I think the first step the ministry plans to take is to ensure that it has all the pieces of the puzzle in front of it, and to understand the pieces of the puzzle that it does now have in front of it. This is why we're putting a significant emphasis, in our responses today, on our steps to review the system.

That there is inconsistency geographically and that there is inconsistency with respect to the kinds of services that children with one type of illness or need have over another in part comes from the fact that it has been

quite some time, if ever, since the government has been clear about what core children's mental health services it's willing to fund. In order to get us to a point where we can work with the government and recommend what those core services will be, we need to engage with experts and clinicians in the research community to help us understand the current thinking and the current evidence that suggests which services are absolutely vital to have in every community.

I think the examples you've provided are very much the portrayal of the stories that parents tell us as well, that we read about in letters they write, that agencies bring forward to us and that we have here from parents as we discuss with them. These are stories about what are perceived to be gaps. Beyond perception, there are truthfully gaps. As the minister indicated in her recent comments when she was in Ottawa, there are truly gaps in the system that need to be filled.

It creates the feeling of discontinuity and it creates the feeling of too many doors and too many assessment processes to go through and very much the feeling of frustration that you have expressed and the deputy has expressed earlier. Our need to embark on a review is really driven by the stories you have shared and will get us to a point where, through discussion, through analysis, through a better understanding of what the capacity of the system is now that we fund and what the true need is, we understand much better, as the auditor has indicated, the question of waiting lists and waiting times based on reliable information from our agencies. Piecing those pieces of the puzzle together will, we believe, paint a picture of the kinds of high-level and more operational policy directions that we need to provide to our agencies, directions that we hope at a local services system level will correct gaps in service created by arbitrary geographic boundaries, will encourage agencies to work together, so that whether it's a city boundary or county boundary, the child in that broad community can be served by a more co-operative, integrated effort by the agencies there.

I've spoken a little bit about this. With respect to responding to the specific needs of children—and this is with respect to clinical needs and the type of illness—our work on core services and our work with the research community we hope will guide us toward a better understanding of what the role of government can be to support stronger agencies staffed with more and higher-quality children's mental health workers to make those determinations about services and the specific needs of kids, with an ongoing view that children most in need, children in crisis, families in crisis, are where we need to put our resources as soon as we can.

1150

**Mrs Sandals:** Can I just follow up? I just want to do one little boast and brag bit. I suspect I'm in the unique position—you're talking about inter-agency co-operation—of having the children's mental health agency and the family and children services jointly make a presentation to Dr Rozanski when he was looking at educa-

tion funding. We actually have a good community co-operation model that's trying to get the services in there. Thank you.

**Mr David Zimmer (Willowdale):** I just want to pick up on something that Ms Martel raised. Again, I'm quoting from the same section of the auditor's report, the opening comments. It seems to me that the auditor's overview, if you will, is that he had real problems with the assessing and monitoring abilities or functions of the ministry. The auditor went on to say, as Ms Martel pointed out, that although the ministry pointed out these deficiencies in 1997 and "the ministry agreed with the recommendations in that audit and agreed to implement the necessary corrective action," progress had been "less than satisfactory." That's as of 2002-03.

Could you tell me, in your view, where the two or three major systemic barriers or institutional barriers or difficulties were in the ministry achieving a paradigm shift so that it could correct those areas? That's a very general question and it has to do with institutional culture, if you will. What would you say were the two or three major institutional cultural barriers that prevented you from reacting more quickly to the auditor's 1997 concerns, and how do you plan going about breaking down those institutional blocks or barriers?

**Mr Rzakki:** Thank you for the question. I can't speak fully to the culture of the ministry or cultural institutional barriers that might have existed in the years following the 1997 audit. I know that as a priority the ministry did put its efforts to what was probably the most intensive and most significant contribution it could make to improving the world of children's mental health services and social services more broadly, which was to embark with the service system on the Making Services Work for People framework. That was very much about locking in the accomplishments of each community in terms of where they had worked together and building on that to have, as a requirement in every community, a certain capacity to respond more quickly to resolve complex cases, to ensure that access to the residential system of services was achieved through a single window and to increase significantly the information sharing among agencies about the cases of children and adults that were before them at the time to be resolved and served.

That the fuller program of recommendations was not accomplished is something we've clearly recognized. At this time, what I can say on a going-forward basis is that it's clear to us the auditor is making recommendations that can inform our work on a broad range of children's services. It's clear to us that it's going to take a considerable amount of work. And it's clear to us that it will take, in some respects, some investment in our capacity as a ministry to manage the significant change ahead as well as to invest in improvements in the way we're expected, and appropriately expected, to manage public funding to services.

I would say an important aspect that really underpins why, going forward, our ability to respond fully to these recommendations stands an improved chance is because

we've created a ministry around the needs of kids. There's a greater focus than there has been before on the need to look at, first, research and what research tells us kids need and what services governments can fund to meet those needs.

We're looking much more in a focused way now than ever before at our information systems and the information we collect so we can be better equipped managers of the relationships we have with our transfer payment agencies. These are investments in information technology that I think need to be significant, not only improving our existing databases and asking better questions of those databases and our agencies, but making it far less labour-intensive for agencies to provide us with the information that we need so they can be off spending their time serving children and not our important needs as managers.

Rather than reflect on the past—and I can't provide a full answer to you—I think there are some organizational and cultural changes upon us that give us the best chance of moving forward on the agenda of work that the auditor has recommended to us.

**Mr Zimmer:** Just to follow up, if you were to identify two or three of those cultural changes that you're contemplating, what would they be?

**Mr Rzadki:** There would be a huge emphasis on working co-operatively across ministries. We're doing that in two ways. First, by bringing into our new ministry the services for children that best belong where there is a need for policy integration as there is a need for service integration. That's the first way.

The second way is to build stronger relationships across ministries that will continue to serve children in their ways—that will be the Ministry of Education, predominantly, and the Ministry of Health and Long-Term Care—so their work and our work can be accomplished together.

I think there is a certain amount of cultural change that is brought by political leadership around an organization. This has been the case in every effort by governments now and in the past to bring focus to children. So whether it's a secretariat or a much larger step toward a ministry, those kinds of initiatives do bring people together with a particular focus. I think that's important, and senior leadership at the bureaucratic level also. The return of Deputy Minister Lang has certainly brought some focus and commitment of people who have worked with her in the past to bear down on this agenda and find solutions in an early way. So it's a combination of things.

I'm certain that three months from now, six months from now and a year from now we'll have a better handle on what it was that we meant by it and what it was that made it happen at the pace we hope it will happen at.

**Mr Zimmer:** Thank you very much for that forward-looking answer. I look forward to next year's session.

**The Chair:** We're going to adjourn for lunch until 1 o'clock.

Ms Martel will be first this afternoon, then Mr Hardeman and then Dr Qaadri.

*The committee recessed from 1200 to 1304.*

**The Chair:** We'll bring the committee to order. I think our first questioner following this morning's questions will be Ms Martel.

**Ms Martel:** I have questions regarding waiting lists and capacity. I wanted to start with a point the auditor made, which was that with the exception of the autism program, information about waiting lists and times was not normally provided to the ministry. I'm wondering why it's not a requirement of the transfer payment agencies to give the ministry information about waiting lists, because that's pretty critical in terms of determining how you allocate resources from there; and if it hasn't been a requirement, is it going to be a requirement, and by when?

**Mr Rzadki:** Thank you for the question. It has not been a requirement for us to be asking our transfer payment agencies about the waiting lists that they face. We believe, going forward, we need definitely to understand what services children are waiting for. It would be very difficult for the ministry and the government to be able to develop a plan for allocating resources better or investing resources more effectively without a better handle on where the gaps in service are. It's clear to us, even among the community of people who have a sense of the size of the waiting lists province-wide, that we all need a more reliable or accurate gauge of in fact what the difference between the capacity and the wait-list is. So I would say up until now we haven't collected that information. I think we're going to need to.

It's also important, though, for us to indicate one of the significant responsibilities of our agencies, and this touches on the question earlier with respect to the capacity of boards and the need to have agency boards that understand their roles and responsibilities. It's the main responsibility of agencies not only to provide service but to manage their caseload or potential caseload to ensure that children in critical need are getting the services as early as they can and to fashion and create programs that best use those resources to serve the maximum number of children. So in terms of wait-list management and reducing those wait-lists region by region, community by community, agency by agency, we have traditionally looked, and will in the future look, to the role of our agencies to be the lead in making decisions about what is urgent, what's clinically necessary and which children in their potential population are in need of resources sooner rather than later.

**Ms Martel:** I'm not suggesting you do that. I don't want to see that happen, because it is the people at the local level who have a better understanding of that. My concern is, though, that ideas about waiting lists are running up to about 12,000. I'm going to ask you next, even without those data, what your best guess is. That's certainly a number that Susan Hess and other people in the community would use and feel quite comfortable about using. But my concern is, as a ministry you can't make intelligent decisions about allocation of resources if you do not have that information. You could do it as part

of a service contract and have it reported on an annual basis. You could do it on a quarterly basis. But you really do need to have—and this probably requires some technology upgrades—a system whereby that can be much better managed and you have an understanding of what those waiting lists are. I'm not suggesting you should be telling the agencies how to manage their lists. We need to know how big those lists are to make appropriate determinations about funding.

My second question is, based on the fact that it's not a requirement, what is the ministry's best understanding now of what the waiting lists are? I'm interested both for residential placement and for non-residential placement or placement in the community. Do you have a sense of that from the regional offices?

**Mr Rzakki:** I'll ask staff if we've got that information available. I don't have it at this point.

I will say generally, though, that we're aware of the wait-list estimates that Susan Hess has been explaining and articulating quite well and effectively to parents and others across the province, and that number reaches 12,000. We know that Children's Mental Health Ontario has a number that's in the range of, I believe, 8,000. What we don't know, and this is not to diminish at all the advice that we need to get our hands on it and a handle on it—what we'll need to do as we embark on this is to find a way to discern, among what's reported to us by agencies, who are children truly waiting for service at that agency who may already, at any point in time, be receiving supports or services from another agency. Given the complexity of the system and the many players who are funded to provide services, it's often true that parents may be waiting at one agency and receiving services from another. That is not at all to say that the waiting list is non-existent or much smaller than what people are purporting to say. We take the size of the potential waiting list quite seriously and need to endeavour to get a better handle on it.

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Permit me to ask staff if we've got at our fingertips here the detailed answers to the questions you have asked and, if not, we will certainly endeavour to provide those. Staff indicate that we don't have wait-list information at all, either for day programs in our community services or, as well, for residential services.

**Ms Martel:** You don't have it here or you can't compile it?

**Mr Rzakki:** The ministry doesn't collect it. We would be able to compile it through a process, no doubt, of surveying agencies, but we do not do that on a regular basis and therefore don't have the information.

**Ms Martel:** OK. Peter, do you mind if I just ask the auditor's staff something? On page 58, when you talk about waiting lists, bullet point number two says, "In one region that we visited, 224 children who had been approved as requiring residential-based care were on a waiting list" averaging eight months. The next bullet point below talks about another region that "had a con-

solidated waiting list for non-residential services." Where did you get that information from, then?

**Mr Jim McCarter:** It could be that when we went out to visit the regions, some of the regions had some waiting list information, but all the regions weren't collecting it consistently and it wasn't being consolidated at the head office level.

**Ms Martel:** Can you tell us of the nine regions how many would have had waiting list information, either for residential or non-residential or both?

**Mr McCarter:** I don't think so but I'll ask my colleague.

**Mr Walter Bordne:** We only went to three. I can't speak to the other six. The three were sort of hit and miss.

**Ms Martel:** Can I ask the ministry—it sounds like some regions have something. I would appreciate it, when you go back from here, if you could go through the regions and see how many of those you can provide us with. I'm looking for both residential and non-residential waiting lists. If you can do that, that would be really helpful.

The other suggestion I have is, since one region appeared to have a consolidated waiting list—that might be another approach when you make it a requirement to provide information, which I hope you do—you also suggest to the transfer payment agencies that they try and develop consolidated waiting lists so that you don't run into the problem of parents or children being on three or four different lists for services. I don't know which region that is, and maybe it's a smaller region so it's easier, but it might be a model that you could look at.

**Mr McCarter:** I just want to clarify. They didn't have a consolidated waiting list for all the agencies in the full region; they did have some waiting list information for some of the agencies.

**Ms Martel:** So the seven were not representative of the entire group in that region. Is that correct?

**Mr McCarter:** Yes.

**Ms Martel:** Thanks for that clarification. I think what it did point out, though, which was interesting, is that they had 138 children waiting but only 28 being served. So I had some real questions about who those agencies were, if that was the small number being served.

**Mr Rzakki:** I'll just ask Dan Lafranier to add some perspective on where in the children's mental health system waiting list information may be collected. In part, this has to do with capacity, the framework we've created under making services work for people, where we've asked communities to create a single window for access to residential care and an access mechanism and a case resolution mechanism for more complex cases. It is likely that in that part of the system a keener eye on the waiting list issues might be kept. Dan, perhaps you could provide some insight there.

**Mr Lafranier:** Yes; two things I think I'll share. One is that the ministry expects agencies to measure demand for service year over year in terms of how it aligns its funds for service. So there's an expectation around wait-

ing lists that the agency understands the demand for service within the territory. The ministry doesn't collect that information because this is agency information they need to use to allocate their resources. The ministry does not allocate funds according to waiting lists. We have a funding base with agencies within the resources we have available. We contract year over year with those agencies, defining what the service priorities are, what services they have available given the population they serve, and we enter into a service contract. So I wanted to clarify that there is an expectation that demand for services, often expressed through waiting lists, is part of that expectation of agencies.

What Peter is talking about on central access—part of the “making services work for people” policy that was referenced earlier was the underpinning for the creation of a central access mechanism within communities so that individual families had a single place to go to access services for children. It's those mechanisms that may have the list you're talking about around residential and non-residential. Whether it's inclusive of all services depends on the access mechanism. Whether it's for children's mental health only depends on the access mechanism. So you need to be careful that when you get a waiting list number, you have to look within the number: What are we talking about? What are we waiting for? How large is it? Although a waiting list can be an expression of demand, we need to understand demand for what, what type of services and how large. So it's not as simple as a number, although sometimes—numbers certainly indicate demand, but we have to look inside of that. That's why we ask agencies, which understand their business, their territory, their geography, let's hope, what kind of demand they are experiencing.

**Ms Martel:** I understand that, and I'm not saying agencies shouldn't do that work. I'm getting back to a point I think the auditor identified. You are essentially funding agencies based on what they got last year and perhaps an inflationary increase. My argument to you would be that that may have nothing to do with the reality of the number of clients, the number of children you're trying to cope with. The only way you're going to start to reallocate resources in a legitimate fashion, in a reasonable fashion, is if you can actually receive the information from the transfer payment agencies about who their clients are and what their needs are, both residential and non-residential. I'm not for one moment arguing that the ministry should be running the waiting list; I'm saying, until you start getting that information, you're not going to be able to respond to a concern that I think we all have about how money is being allocated or making decisions about whether you allocate money based on waiting lists versus special projects.

This is the second area I just wanted to touch on. The auditor made it clear in terms of the waiting lists that we couldn't really see how the ministry could respond to significant problems on a timely basis. The ministry's response, on page 59, was that you had implemented standardized intake and assessment tools to try and

improve services. That would improve prioritizing services. Then you go on to say, “The children's mental health sector is currently experiencing capacity issues.” I understand that, but the point the auditor makes is that the ministry, although increasing funding since 1999, has been putting money into special projects and not dealing with the capacity issue, and if the ministry started to do that, you might start to make an impact on the waiting lists.

My question is, over and above whether you are going to start getting information in, are you then going to make some decisions that you have to get at that capacity issue, at the recruitment and the retention of staff in those programs to make sure that the TPAs are able to provide a high-quality service? It seems what has happened since 1999—and there has been a very significant increase in funding—hasn't done anything to deal with many of the kids who are sitting and waiting for service.

**Mr Rzakki:** You are right, and the auditor is correct, that investments in recent years have been very focused. We spoke a little earlier about the benefits of the investments in mobile crisis response, tele-psychiatry, intensive child services and zero-to-6 investments. We believe those are all bearing out. As the auditor indicated, we had set in a clear way some of the outcomes we were expecting from those investments. So indeed for those four initiatives or projects, they were, as you indicate, very focused.

The other large area of increase in government investments in the children's mental health field has been in the area of autism. To the point of whether those investments have had a broad positive impact on agencies, the answer would be that they have worked to benefit those who are serving children with autism in a very focused and specific way.

There is no question that the approach to begin to take a look at the capacity of agencies with respect to their salary and wage pressures has to begin with a very serious look at the outcomes we want out of investments in children's mental health services and to look at research, as we've indicated, to help guide us in what practices and approaches work best for children.

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From that base of research and improved understanding—much more improved than where we are today—we need to take a look at the demands out there through a good, thorough look at the waiting lists and the capacity of the system to provide existing or new approaches. Then we need to look at how we've aligned our resources geographically to serve growing populations in some areas and diminishing populations in others and, as Dan indicated, examine where the demand for more intensive critical services is and how we need to reallocate across our existing agencies to better serve children and to work with them around service frameworks and policy frameworks that get at issues raised by Ms Sandals earlier as to artificial or arbitrary geographic barriers that limit access to services at the very local level.

I think the first step is a broader approach at re-alignment. I think also, though, the agencies continue to

make very compelling cases about their wage and service pressures and, we know, struggle each day with decisions about their programming: which programs they can afford to keep funded and operating in the community, and which ones, because of encroaching salary pressures, they cannot. These are issues we manage day to day through our regional offices, through the contracting we have, to ensure at least, at this point in time, that services are as stable as they can be in meeting the needs of their population.

**The Chair:** Ms Martel, you've had about 20 minutes at this point. I understand you probably want to go into some more questioning, but I'm going to give some other members a chance now, and I'll come back to you.

Mr Hardeman.

**Mr Ernie Hardeman (Oxford):** The auditor's report deals a lot with accountability and equity in service and making sure we're getting value for money, as the ministry is putting it in. I have a couple of questions on it.

First of all, all the money is funnelled through funding partners; other agencies provide the service, and the ministry just funds them. I want to know how we go about making sure we have an equitable distribution of those agencies throughout the province. It would seem to me that we fund agencies when they apply and put something together in our communities to provide services for our young people. But if no one in the community initiates it, that community doesn't have that service. How do we make sure we have the provision of services equitably distributed, not dollar-wise but service-wise, throughout the province?

**Mr Rzakki:** Thank you for the question. In part, my answer is the response provided to Ms Martel. We need to take a step back from the way we've historically funded children's mental health, which very much has been historical allotments or allocations to existing agencies, without a significant opportunity in the recent past to invest new dollars or aggressively reallocate as populations shift and change and as the needs of children become more apparent to us. So taking a more equitable approach is certainly one of the objectives we need to have in mind.

Part of the benefit we see ahead, in the near term of the approach we're taking in creating a children's ministry, is the opportunity to potentially bring into our sphere of influence funding for mental health services that exists and is provided through the school system, but perhaps more importantly through the health care system in terms of hospital funding.

It's true that equity at a very local level can sometimes be created when different types of agencies funded by different ministries work much more collaboratively to take a look at the children before them and serve them in a much more well-planned, coordinated fashion. It would hold true, then, that local inequity can sometimes come from the fact that hospitals may not be planning their services and programs, whether inside or outside the hospital setting, in collaboration with local agencies that

the social services side of government might fund. And there may not be the connection with the school system, where it's often the case that a child's mental illness becomes an issue of an urgent nature. There may not be well-coordinated partnerships with the education system. So the feeling of inequity and the feeling that the resources we have in the community aren't working well for parents can very much come as a result of a lack of co-operation or coordination, despite the fact there may be resources there that can assist the child.

**Mr Hardeman:** I just want to talk a little further on the issue of accountability and whom we're accountable for. Obviously the auditor's report deals with the accountability of the providers to the ministry to make sure we have value for money and that it's going to serve the purpose the ministry's directives suggest it should go to.

In my community, the concern is from the other side, from the consumers. Are we accountable to the people we're going to provide the service for? Are we helping the families who have children with mental health needs to be able to access those services and know where to go to get them? That's how we're accountable to the end user.

In my community, it was brought to my attention that this wasn't the case. Parents couldn't find services, and where they could find them, they weren't available. The list was so long that the child would graduate from high school long before he got the mental health services he needed. They said it was because our area was not fairly funded, based on our neighbouring communities or the rest of the province. Others in our area were getting more than we were.

We spent months trying to figure out whether that was true. If I can't figure it out with the staff we have and so forth, how can I expect the poor lady who is looking for services for her child to find those services? As you mentioned in your earlier response, it turned out, when we got through, when we put all these sources together, there seemed to be some relationship between the funding for children's mental health in my community and in our neighbouring communities, but when you actually looked at the services as they're outlined in children's mental health, there was absolutely no fairness in it whatsoever.

The question really is, with the new mandate and a new ministry—we're going to take all children's services into that ministry—can I tell my community this is going to help the availability of services, the accessibility of services and the understanding of where the services are to be found? Is there going to be a one-window approach that when we need services, everyone is made aware of it, and that when mental health services are being provided at the hospital, the people who need the services will know they can go to the hospital and get them, rather than the only ones who go there are the ones who happen to be there for other reasons? Are we going to get more accountability than we presently have?

**Mr Rzakki:** I think very much so. An important part of communicating to parents what improvements may lie

ahead, really, centres on parents and service providers knowing what to expect will exist in their community. The work we want to do in the near term around establishing which core services need to be available locally or regionally—or in terms of specialized services, provincially—we think is very important work. It is important for parents to know what set of services to meet what set of particular needs would exist locally, and to have their expectations and understanding quite clear that wherever they go at a local level there will be a certain base of services provided. It's also important for them to know what would be provided regionally and by whom—services of a more complex or specialized nature, and lastly, which services we can afford as a province to provide to children with mental illness but on a province-wide basis, where we know we have the capacity, we know we perhaps can't locate it in every town and city, but which we need to be committed to ensuring exist, and exist in a way that can be accessed more broadly by children.

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We've never taken this approach to ordering the services in the community and in the regions and the province this way. We think it will contribute immensely to what is understood locally by parents and by service providers should be available and, more importantly, who among hospitals, community service providers, the education system and others will be providing those local core services.

**Mr Hardeman:** Lastly, again I want to go to the waiting list that Ms Martel was talking about. In my community, Oxford Child and Youth can only provide so many services. There is need for another one or two organizations just like that to meet the waiting list and the demands of our population. But since they don't exist, does the ministry ever look at actually funding the existing ones more, based on their need? And if that was a possibility, how can you make that judgment without the ministry having some idea of what the waiting lists are?

When my community tells me we have twice as many clients as we can service, if another agency came forward and said, "We would like to provide that service," we would provide funding for that, because that's how we set up our front-line services. But that agency can't get more money, regardless of how many children they have waiting. How do you justify not looking at the waiting list and not collecting the waiting list, and still provide good service?

**Mr Rzadki:** Well, we haven't provided a justification yet for not having a better grasp of the waiting list, and indeed we've committed here to endeavour to do that. It's the only way. It's one of the starting points or pieces of the puzzle that were referred to earlier that we need to have in our hands before we can, first, understand whether or not existing resources and funding and services are working best for children, let alone what new investments, if those opportunities come, need to be put where to ensure the maximum positive new benefit for

serving children with mental illness. So I would agree it's certainly a key starting point for us.

**The Chair:** Just before Dr Qaadri comes up, perhaps the committee would allow me to ask something about these waiting lists. I'm always very wary about waiting lists that are produced by various different groups.

I know in the long-term-care area in the city of Ottawa, for instance, at one time we had waiting lists of 1,200 or 1,300 people. Actually, when people were phoned to bring their parent, or the person was phoned, only one third would take it up, so that you essentially had to divide your waiting list by three in order to get what the real shortage was in long-term-care beds in the city of Ottawa. Consequently, the Ministry of Health goes out and provides for more long-term-care beds, and now we have an overcapacity, in essence, in terms of long-term-care beds.

So my question is this: In terms of waiting lists, are you doing any work to establish how you would structure what is a valid name on a waiting list? I think in terms of long-term-care, children of elderly people would put their mom or their dad on the list in order to protect them in the future. Even though they thought they weren't ready for a long-term-care bed, they would say, "I know there's a waiting list. Therefore, I'll put mom and dad on the list just in case they need it in two years," and when two years comes up, they are still able to stay in their own home. Therefore, the waiting list is not a real measure of what the need is.

I guess in terms of waiting lists, I'm very skeptical of them because they are driven by a whole number of purposes, sometimes by the providers of the services rather than the clients of the services, and those kinds of things. Therefore, a waiting list in Oxford, or the waiting list in Lanark or in Ottawa or anywhere else, has to be consistent in terms of where you go from one part of the province to another. Have you thought about how you would go about creating the tool so that you could measure equitably what the services were vis-à-vis Oxford against any other part of the province?

**Mr Rzadki:** We are in the process of thinking through how we're going to tackle this issue. I think it's been—and, Heather, you might want to help out here—since the 1980s that the methodology was developed and rolled out to provide for the government and others a sense of the disconnect between the capacity and the demand for these services in communities. So we need to take a look at those methodologies and others that will ensure that when we ask, we are, as Dan indicated, not double or triple counting, and that when we ask, it's understood in one region what we're asking for as consistently as it is understood in another region.

I think this kind of survey is important. In terms of all the work that we're doing in the new Ministry of Children's Services, the inquiries that we make, we need to make in a very deliberately scientific, accurate way so that the base of information that we use to embark on new change is sound.

As the auditor has pointed out, even we have less than full confidence in our information systems at this point in

terms of accuracy, and we need to spend sometimes additional time validating our own inputting. I think in addition to that, other obstacles stand in the way of our taking a really clear, good, accurate, deliberate, scientific approach to these big questions. But indeed, as I said, these are the ingredients that we need to have in place before we can embark on any discussion of realignment of services, of the creation of more integration, or indeed, if future opportunities come, of how we might invest further funds in this system as well as other parts of the children's services system.

**Mr Qaadri:** My question is really about the assessment of children with potential mental health problems. In civilian life, as a physician dealing with both adults and children, it's a somewhat nebulous area sometimes to get a handle on. For example, we're dealing with individuals who have difficulty, say, with their sleep cycle, their ability to focus, their readiness to learn, or unlearn, as the case may be. Malnutrition, unfortunately, continues to remain a problem, particularly in some of our younger Ontarians, and of course the official saying is that when you're hungry, you can't learn. There are problems with violence and acting out and abuse of various forms, and suicide.

My question is about these various schools and mental health assessment tools: the scales, intake forms, assessment modules and so on. How are they developed, how do they help to determine need, and what exactly is the implementation process? For example, do you have to be trained for a week before you can actually assess a child? And how has the monitoring been regarding the impact on allocation of resources, triage, and standardization across the province?

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**Mr Rzadki:** Thank you for the question and its many elements. I'm going to ask Heather Martin to provide some further detail in terms of the development of the BCFPI and the child and family assessment tool. But at this point I'd just like to say that these were significant endeavours by the government to bring some clarity to the world of assessment and intake to address some of the issues we're still hearing about today through members of this committee and elsewhere. It's important for parents to have confidence that when they go through the process of an assessment with their child, as much as possible it's a one-time thing, and that as they travel from an agency to a psychiatrist or to a hospital, that kind of assessment has a base, a determination, of what challenges the child faces and what potential services can be brought to improve the child's development. That's a sound assessment and trusted by all who will be asked to deliberate on a plan of care for the child. It hasn't been the case, up until recently, we believe, that parents have experienced a system of service providers who all agree on what the best determination of a child's need is and, therefore, what the best plan of care should be.

We think work in the children's mental health field has brought some benefits. We think, more broadly, as children travel—particularly children with special and

complex needs—to seek out services or have services provided by a varied number of disciplines, that the more we can minimize the differences of opinion about how to assess and what the needs are, by bringing the community of providers together and using research, the better off this service system will look and perform for children and their parents.

As long as we have, though, at the very local level, differences of opinion, approaches around what a child needs and that those approaches or opinions are based on differing views or debates about assessment tools, we're going to be supporting a system that creates confusion and expends time—unnecessarily perhaps, but certainly time that stands in the way of identification of a child's need and when care and service can get to them.

I'd like to ask Heather to provide a little bit more information about the BCFPI and CAFAS.

**Ms Heather Martin:** To answer the question about how it was developed, it was developed with a group of stakeholders and with a consultant who considered a variety of tools in the previous government and came up with the model of tools that they thought would be best for children's mental health. That was the brief child and family phone interview, which is a half-hour interview conducted with the assistance of a computer whereby a family and a child's needs and strengths are assessed. It's a method that is used to triage, to determine what the appropriate service would be and, also, to assess priority of need. From there, if the child is not in need of children's mental health services, the tool is quite adept at picking that out as well, and the family can be referred to another service.

The child and adolescent functional assessment scale is used to really measure the effectiveness of the interventions and see how the child progresses. The intent always was that this material would be available on a stand-alone information system to prevent families from having to tell their stories over and over again. So if they are shopping around for service, one service provider in, say, Woodstock and another service provider in, say, London could talk so that the child and family wouldn't have to tell the story all over again. The intent also was to provide an information system that would enable us to track child outcomes as a result of services provided, but without the technological supports, that hasn't occurred.

There was actually training provided to each of the children's mental health staff that are funded under community and social services and under health and long-term care so that they could learn to use the tools effectively. The contract managers for both of those tools—one being McMaster for the brief child and family phone interview, and the Hospital for Sick Children for the child and family assessment scale—actually provide ongoing training to agencies as required, to make sure that, as there is staff turnover, staff have the appropriate knowledge in order to implement those tools.

**Mrs Sandals:** It occurred to me, as Mr Hardeman was talking and asking the question about, "What if no agency in the community applies; can the service

exist?"—maybe we even need to back up a step and talk about the capacity of the community to assess, because certainly assessment is going to drive demand, in the sense that if the child hasn't been assessed, they're not going to be on anybody's waiting list.

Have we looked at, then, the capacity to assess within various communities, in terms of looking at equitable services? That would be the first question. Going beyond that, the deputy talked about a maze of services. We've talked about overlapping waiting lists, and trying to sort that out. In many cases, it will be a case management team that will be helping people to sort out (a) where to find the assessments and (b) where to find the services. But in a lot of cases, the case manager has a backup too, so that there's a waiting list even for case management services.

When we went right back to the beginning of the deputy's presentation, she spoke about seamless service delivery. So (a) if you could talk about capacity of communities to assess and (b) this whole case management, integrated service delivery—where are you going in terms of future planning with that?

**Mr Rzdaki:** Thank you for the question. I'm going to ask probably Dan and Heather also to contribute to this question, with respect to whether or not we've deliberately gone out to measure the assessment capacity of our communities.

I know the assessment function is one that we contract with our agencies to provide, largely against what they have contracted with us to provide in the past. We have not undertaken deliberately, though, to look at whether or not the assessment capacity in each of our agencies, regions or province meets the demand for assessment. You're right: If children aren't being assessed, then they aren't showing up yet at all on anybody's list for service. So assessment, and the role and the function of that and who provides it in the community, is certainly part of the equation of core services that we need to be looking at and need to be determining how these are distributed and delivered locally, regionally and provincially.

Perhaps I'll let Heather or Dan—Dan, maybe you first—just describe a little bit more about assessment in your community and how we keep an eye on it the best we can.

**Mr Lafranier:** There are a couple of parts to the question, and I'm going to back up a wee bit. The point was made around what happens if communities don't step forward. I think, if you take a look at the development of our relationship with transfer payment agencies across the province, the foundation of our transfer payment system is around the community's ability to respond to community need. That has always been there. The ministry has never been in a position of having to say, "The community is not responding. We need to do something here." It's usually the other way around. They've been very responsive. I think our support there is in developing them, supporting them, giving them the kind of direction and information they need to form an organization to deliver a service. So I wanted to give you

some feedback on that part of the question that came earlier.

In terms of communities' ability to assess, I think it's an interesting question. You're quite right: In smaller communities they really do have a lack of resources of being able to really fundamentally deal with the assessment question. The answer's a bit complex, but it rests within the ministry's overall responsibility in managing a system of services across a territory. The regional office contracts with a number of service delivery agencies. Our expectation is that there is a relationship across those agencies, so that in smaller communities and remote locations, or where there's a limited capacity and the ministry recognizes that, we're able to bring to the table expertise from other parts of the geography to supplement the assessment capacity: training, best practices, perhaps providing the services at outreach, so that each community doesn't need to develop its own; it can look to a partnership with larger communities to support it. That's part of the response.

The other part of it is in training, support, service development and those types of things, which is more medium- and longer term. But in the immediate term, we do have relationships across the service system that enable us to at least get a broad view of where the issues and where the needs are. That's what Deputy Lang was referring to earlier when she talked about the maze of services. Part of what she was referring to was the intent of the Ministry of Children's Services to begin to unbundle the maze and begin to make it coordinated and cohesive so that the system functions better.

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**Ms Martin:** I think the other thing I'd take note of in terms of assessment capacity—one of the things we frequently hear about families is that they're over-assessed, and that there's an assessment tool for a variety of doors they may go to. I think the intent of the brief child and family phone interview was to get away from that, to really speak to parents about what their child was experiencing.

In the context of lack of capacity to assess, that was one of the reasons why the tele-psychiatry initiative was begun. We recognized that across the province of Ontario there was a real lack of child psychiatrists. Originally there were eight to 10 tele-psychiatry sites, and it has grown in the last two to three years to be 26 specific sites in remote and rural communities that are accessing psychiatrists through the Hospital for Sick Children. So it has been highly successful for those parts of the province where they don't have the capacity.

**Mr Zimmer:** Setting up a new ministry from scratch is a huge project, I suspect. There is a lot in the auditor's report and you've heard a lot today. We've heard a lot from you on the difficulty in usefully gathering relevant information and then using it to manage all the issues you have to. Information technology is a huge administrative nightmare that large organizations have to come to grips with. How are you grappling with the IT systems that your new ministry is going to have to put in place so it

can manage the information that we're all talking about today that we're not getting or getting in part?

**Mr Rzaeki:** Thank you for the question. First, we're really spending our time coming to terms with the number of information systems that we have working for us in this plan to better understand how the system's operating and what we might do to improve things. Governments in the past have made significant investments in some places in information technology, largely to improve the ability of our agencies to track the services they're providing and track some of the outcomes of the services they're providing. We've moved, in part, away from just collecting input/output data and are moving a little bit more toward tracking service outcomes, which is a positive step that has been taken recently by recent governments.

We do need to map much better—this will be the first step we take—which IT assets we have that are generating what kind of information for us and to determine from that map what might be the two types of investments we might consider making.

The first type would be incremental improvements around existing systems so we can get more from them for small investments and so we can move toward having the kind of information we need much more readily.

The second type of investment would be of a more strategic nature. It would really involve us looking at which parts of the children's services system aren't well supported by information technology and gauging where new investments in those parts of the children's system might give us the best return for our money.

One of the most difficult issues that we expect to have clearly portrayed for us as we develop this map is the lack of inter-operability between what our agencies are using to track their service and financial information, what we're using, and what service providers are using in other parts of the children's services system; for example, hospitals, children's treatment centres, school boards.

It's a frightening prospect to think of the last several decades of investment in IT and that these investments have created a system that quite likely doesn't talk to itself well. Despite the fact that there are always issues of privacy and of sharing of information, which has to be done with great care and caution, there is a need for the many disciplines that circle around the child to provide services to share information in many ways in an electronic format. That's a grand vision and it's one that's been articulated by previous governments around a smart system for health. The principles that underlie that initiative would very much underlie where we'd like to go someday in providing and supporting services to children. But we've got a long way to go before we get there, and I think our initial steps to map it will point to some early, immediate investments that we would propose to the government that would be worthwhile investments and would certainly help not just governments make decisions, but service providers provide services in a much more timely and effective way.

**Mr Zimmer:** Specifically to your ministry, what might some of those immediate steps be?

**Mr Rzaeki:** We have spent some time in recent years developing an IT system that we call ISCIS, which stands for the integrated services for children information system. It is a system that we have rolled out through the public health units that are delivering the Healthy Babies, Healthy Children program. It's a program that has developed somewhat in programs for children that we refer to as infant hearing programs and preschool speech and language programs. We have an early version of ISCIS supporting our providers of services for children with autism, and we really do need to take stock of whether that investment is providing us with the kind of information we need. We think there could be certainly some improvement, some further investments that we could make to join the providers of service who are now based on an ISCIS platform to provide some opportunity for information to be shared within privacy rules and regulations, but to be shared at a broad level so that wait-lists can be understood and well managed locally.

It's often true that a child and family who have been assessed and supported through the early intervention program of Healthy Babies, Healthy Children, where there is an identified need, would be referred to an infant hearing program or a preschool speech and language program. The ability for the public health unit and those service providers to be working off the same information technology platform would, we think, be one of the areas where we might want to make some early investments. It would certainly facilitate case planning and coordination, if not expedite the provision of services to those children.

**Mr Zimmer:** If you could choose one exercise in IT development that would assist in the autism file, what might it be?

**Mr Rzaeki:** At this time, we are in the process of examining the current programs and services for children with autism. I think investment in IT at this time would be down a few notches in terms of what might be the next steps the government takes to improve those services or complement or supplement them. We have what we believe to be a pretty good investment in IT. What we need to do is, I think, a lot more definitional work and training of regional program providers so that they understand what the data elements are that we want to collect, and to provide them with the opportunity and the resources to actually collect them and input them into the system.

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I'll add that the intent early on in investment in IT for these programs was really to be able to track very accurately and in a timely way how services were being provided, how quickly they were being provided to the emerging number of children with autism who need to be served. We would say at this point that, as in the creation and start-up of any new program, there are difficulties in applying all the training and staff time to all of the functions that we expect of our agencies, including the one to provide timely and accurate data on the services they were providing. So we believe agencies chose to focus on staffing up and providing therapy and other

supports to children over spending the time on inputting data. I think, in retrospect, that might have been a choice they had to make. We wish that we would have had some effort on the IT side too, so we could have a more regular sense of how those programs are growing and expanding and serving children.

So we'll need to, through the efforts of our colleagues in our regional offices and through much fuller planning, really take a look at what is needed in the agencies providing these services in terms of training and what can be done to help them input data and provide us with information in a way that takes the least amount of resources, particularly staffing time.

**The Chair:** I have on my list Ms Martel, Ms Broten, Mrs Munro, Dr Qaadri and Mr Arnott. We were aiming at 3 o'clock. We may be a few minutes after that, if necessary, but I just wanted to let everybody know that that's sort of the timeframe we're trying to work within. Of course, after the delegation has left, we will have a closed session to try to instruct our researcher as to our general tendencies at this point in time.

**Ms Martel:** My question's about autism and I want to start with the information system because the auditor in his remarks says that the system only provides consolidated province-wide information and as a result the ministry cannot relate specific data such as lengthy waiting lists and long waiting times to specific agencies. Is that a function, then, of the agencies not taking the time to input it, or the software doesn't allow them to input that on a regional basis?

**Ms Martin:** The software actually allows them to input the information on a regional basis but the information is available at an aggregate provincial level only. So they don't have the capacity locally.

**Ms Martel:** So are you going to make some changes to that? This is just further to the need to—especially with autism, because this is growing, not declining. If you're going to make some serious assessment of regions' waiting lists, you're going to need to have that information in a different format. What is the cost to do that? Does the ministry have a sense of that and is that where you're heading?

**Ms Martin:** I don't think we have a sense of the cost of it. We do think that it is important. In fact, we did engage a consultant over the summer who prepared a report on ISCIS and indicated that in fact the regional programs were putting the information into the system for the most part. The concern is that in addition to inputting information into ISCIS, which does pose some confidentiality and ethical concerns for psychologists, as an example, who, according to their code of ethics, cannot allow others to see the actual assessment tool scores—but that being aside, the information is being put in. Agencies have existing systems that they are already putting the information in, but it goes to the comment of Mr Rzakki earlier that these systems don't talk to one another, so there's no capacity to upload or download.

In addition to that, the other issue related to those information systems is that the regional offices, which

are responsible for monitoring and accountability, don't have access to ISCIS at all. So the intent was always that that information would be rolled up corporately. From the vantage point of the policy branch not actually monitoring what's going on in the community—that's a regional office function—that's also something we need to consider.

**Ms Martel:** Is that why the auditor pointed out that ministry staff stated they were uncertain about the accuracy and completeness of the information in the system? Is it because they can't actually access it themselves?

**Ms Martin:** That may have been part of it. I think part of it is based on conversations that we also had with the auditor around the accuracy of the information. There have been huge training issues related to ISCIS with the regional autism programs. In fairness to them, as Mr Rzakki noted earlier, their primary concern was service. While the definitions are clear, I would say it's not been their forte that they are techno-wizards. That's been the issue.

**Ms Martel:** For what it's worth, it's actually one of your technology systems that is gathering relevant information, and while I understand it might not be a priority because there are other demands on the government with respect to IBI, if it's not a huge expenditure to fix so it works better, it would be my suggestion that you do that. These are important databases, and I think the information you're gathering is going to become even more important, given the incidence of autism as that continues to grow.

Let me ask more specific questions about IBI. What is the budget for fiscal 2003-04 for IBI?

**Mr Rzakki:** It's \$46.5 million.

**Ms Martel:** The former government made an announcement on November 18, 2002, about investments in autism. There was a significant investment that was announced but that won't actually fully flow until 2006-07. That was to double IBI—at the time, it was about \$39 million. I see there has been some increase over last year to move toward that commitment.

Two other announcements that were made by the government at the time: \$3 million to help support families and their children with autism as the children enter school or other community services. This was transition funding or money to hire transition coordinators. Has any of that money been spent?

**Mr Rzakki:** I'll ask Heather to help out here too. Yes, some of that money has been flowed to our regions, who in turn have flowed it to service providers, who have hired transition coordinators to very much assist children and parents in the transition from the services they are receiving from regional programs and other services they might be receiving in the community to the school setting in a way that ensures there's awareness at the school level of the child's needs and that any ongoing services, beyond those of a specific therapy that might be provided by the community, continue to be provided in a way that is supportive of the child's education.

**Ms Martel:** How much of the \$3 million was spent?

**Ms Martin:** I actually don't have that number with me.

**Ms Martel:** If you could get us that, it would be helpful.

The other announcement was \$16 million for an out-of-class program for elementary school age children with autism. If I'm correct, that probably was the announcement around the Bridges program, which hasn't gone forward.

**Mr Rzakki:** That's correct.

**Ms Martel:** So none of the \$16 million has been allocated?

**Mr Rzakki:** That's correct.

**Ms Martel:** So you have some money for the next fiscal year, I'm hoping, Peter—you don't have to comment on that.

Let me ask you about waiting lists for autism. In the auditor's report—the most recent statistics were December 2002—1,105 children were on the province-wide waiting list. Do you have a more recent figure with respect to how many kids are now waiting for IBI?

**Mr Rzakki:** Sorry, which year was that?

**Ms Martel:** December 2002, page 58 of the auditor's report: The figure was 1,105 children on the provincial waiting list, compared to 453 children who were receiving service. I'd actually like both figures, if you have them.

**Ms Martin:** What I can do is tell you that between September 2000 and September 30, 2003, 1,910 children were assessed, and 53 children were in the assessment process; 1,430 of these children were assessed as eligible, and 452 were assessed as ineligible; 1,326 children have been discharged from the program, including 531 children who graduated from the program at age six. The number of children discharged may also include some children who were removed from the waiting list without receiving IBI services. As of that date, there were 952 children waiting for eligibility assessments.

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**Ms Martel:** Can I back up and look at two figures: the 1,326 and the 531? When you say 1,326 were discharged, does that mean they maxed out without getting services? It does.

**Ms Martin:** That also includes the 531.

**Ms Martel:** So the difference, in terms of who really got service and who didn't, would be 1,326 minus 531. The balance is children who never got service because they turned six before that happened?

**Ms Martin:** That's correct.

**Ms Martel:** All right. I appreciate those figures.

**Ms Martin:** It also includes children who may have been assessed as ineligible, so it's not totally aged out.

**Ms Martel:** Can you get us a more specific breakdown? It may be a very small group of kids who were ineligible, or it may be quite a large one. You don't know that, and that would make a difference in terms of how many actually were eligible for service and never got it because they turned six before that happened.

**Ms Martin:** The stats to date are that 75% of the children are eligible for service.

**Ms Martel:** So the bulk of the kids just never got service in time, essentially, before they reached age six. You know where I stand on that issue, so I'm not going to make a political rant about that.

Let me raise something that I found was rather extraordinary, and I'd like to know what the ministry did about this. If you look on page 63, the auditor pointed out that at one regional office there were four agencies that were to provide IBI and received \$1.9 million for that very purpose: "They spent all of this funding without providing the contracted-for services. The ministry did not have the necessary detailed information to explain what services had been provided with this funding."

I find that just extraordinary and really require some further explanation about where the money went.

**Ms Martin:** The money actually went for training staff who were going to provide the service through the regional program. The service was confirmed to begin in the fall of 2000. In fact the regional programs had not hired the requisite number of staff and/or trained them to deliver the service. So the ministry provided direction to those agencies to spend that money to get the staff trained, because they have to go through two weeks of extensive training in how to deliver IBI. Staff had to be trained in that before they could actually provide the service, and that's what that money was used for.

**Ms Martel:** What was the date of this allocation? Was it 1999-2000?

**Ms Martin:** It was the 2000 fiscal year.

**Ms Martel:** How many staff were trained for that amount of money?

**Ms Martin:** I don't have that data with me.

**Ms Martel:** I'd appreciate that, and I'll tell you why. Conservatively—sorry for using that word—at a minimum, \$1.9 million would have provided probably 40 kids with IBI for 30 hours a week for a full year. I'm using \$50,000; that's probably a rounded-off figure in terms of how much it costs for children who have severe autism to get 30 hours a week. That's a fair number of kids—it's a lot of money, but it's very expensive for this treatment—who didn't receive the service.

My next question would be, if it went to training—and I'd like to know the number of people who got trained with that money—why was money not then provided to actually supplement that to provide the actual service to the clients and the families?

**Ms Martin:** The reality is that service couldn't be provided until the children had been assessed. If there were not the staff to do the assessment and develop the plan of service, we couldn't give them the money.

**Ms Martel:** I understand that. But there was an initial allocation of \$1.9 million that was supposed to be for kids to get service, right? So the \$1.9 million went to train people. What happens to the decision about putting \$1.9 million back in, so you can start to deal with more kids who are on the waiting list? You've got the kids

waiting there; there's no doubt you've got kids who could be served.

**Ms Martin:** As you know, there is a capacity problem with this program. That means that even though there are more children on the waiting list than are being served, before those children can actually be given money to go and purchase the service directly, they still all have to go through the same assessment process at the regional program. The assessments take a considerable length of time, and there's just no way children can be moved through quicker at this point in time.

**Ms Martel:** Let me just go back to your assessments. I'm sure you gave this to me in the figures you released, but tell me again: How many kids do you have waiting to be assessed right now to determine if they're eligible?

**Ms Martin:** As of September 30, 2003, I believe it was 952.

**Ms Martel:** Just waiting to be assessed? OK.

Let me ask you some questions about direct service. I raise this in the context of some cases we've had raised with us where families said, "We were guaranteed a certain number of hours of service by the provider," and I won't name the provider. I have one mom who contacted me yesterday to say that in her estimation right now, because the child started IBI in 2000 and is due to finish at the end of February, they have lost over 800 hours that should have been provided through direct service from this particular agency.

This is not the first time I've heard this complaint or concern. What is the ministry doing to investigate what is happening in this regard? Parents sign a contract, they are told they are going to get so many hours, I am assuming the agency is paid for the number of hours listed in the contract, yet the child doesn't get it. Where is the money going if it's not being provided in terms of direct service to these kids?

**Ms Martin:** The parents received money for direct funding through the regional program?

**Ms Martel:** Direct service. This was a direct service contract. This was a provider, and it was the staff from the direct service provider that was providing the IBI. It was not a case where the family received compensation after, because they hired an IBI therapist themselves. It was a direct service contract.

**Ms Martin:** The ministry and the regional service providers don't have any involvement in those programs unless the child actually goes through an assessment at the regional program. The only way money would be flowing to a family through provincially allocated funds for direct funding is if they actually went through an assessment process at the regional program.

**Ms Martel:** They did. They are receiving service from one of your providers.

**Mr Rzakki:** The regional program itself, not a provider—

**Ms Martel:** Not their own; they're getting—

**Mr Rzakki:** So this is a regional program issue?

**Ms Martel:** Yes. And the dilemma appears to be that, for a whole number of reasons I won't list but are in the

letter—services didn't get started on time, there was a conflict with one of the providers who had to be replaced—at the end of the day, the child didn't receive the number of hours he should have received as per the contract. I still assume the regional provider is getting the money, but the child's not getting the service.

My question is, how is that happening and what can we do to ensure, when the contract is signed, that the child is going to receive the service? This is a child who is going to be cut off the program at the end of February, whose mother believes he is entitled to 800 hours of service that he didn't get over the last four years. Maybe 800 hours is wrong. Even if it's 400 hours, that's a lot of hours of service for a child who still needs IBI.

**Ms Martin:** Without having the details of the specific circumstance, I don't feel I can comment further. However, one of the things that is clearly explained to families when they are getting service through a regional program is that there is no banking of service hours. So if a child is sick, if a service provider is sick, if an issue arises that a child can't participate for any reason, it's not like they can get the 400 hours they didn't receive at a later time. That's the policy as it currently exists.

**Ms Martel:** Then maybe—

**The Vice-Chair:** Excuse me, Ms Martel, I'm very conscious of the time, and I know there are others who are on the list. So I'd ask you to bring your comments to a conclusion, please.

**Ms Martel:** I was hoping, Madam Chair, that I might have a 20-minute rotation like I did last time. By my estimation I started at about 10 after.

**The Vice-Chair:** I think the Chair did indicate the list of speakers who are still here. In the last two days we have been going on a rotation among members. I would just ask you to draw your comments to a conclusion so we may move on.

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**Ms Martel:** If I might, I would make a really strong suggestion to the ministry as you move forward with this program, because it is an important program; you know that. There are really serious issues around the direct funding model versus the direct service model.

The direct service model is preferable for parents because all of their costs are paid, so obviously there's a preference. If they can get into that stream, they're going to look for that. But then you get the problems I've just outlined to you, where a contract is signed and a child, through no fault of their own—because it's not a question of the child being sick for many of those hours, but conflicts and problems with the agency—then doesn't get the hours they are entitled to.

The problem with the direct funding method is that all of those parents end up paying a significant portion of the costs out of their own pockets, because the money you provide to them that they provide to the provider is capped. So many of those parents are paying thousands of dollars out of their own pockets, and that's not a preferred route for them either. As a result, you have any number of people sitting on waiting lists, many of those

parents paying out of their own pockets, or alternatively, parents getting the service but then actually not getting the service, not because their child is sick or can't participate but because of problems through the agency.

Those are issues, I think, that you really need to resolve as you move forward. I'm hoping there are going to be additional investments in this program; they certainly are needed. Some of that inequity between the funding and these families seriously has to be dealt with. There's no reason why so many families should pay so many thousands of dollars out of their own pockets when other families are receiving a service and it's fully paid for.

**Ms Broten:** We've talked a lot today about waiting lists. Waiting lists are important, whatever the accuracy of them, because they indicate to us at some level that children are waiting for services. We've talked about the need for measurable outcomes, because obviously we're not in the business of providing service for no end outcome. We are in the business of making sure that we really, truly help children to an outcome that is beneficial to them.

I guess it's easy to talk about that we know, and the ministry has acknowledged now for many years, that we need to get our waiting lists in check and we need to make those measurable outcomes come in place. I'm wondering if you can articulate for us the beginnings of an action plan of some measurable steps that will be taken to move in that direction. I haven't been in this milieu for long but I have been a community activist for many years. Sometimes breaking things down into concrete, step-by-step analysis of looking at whether it's a particular facility or how we would make sure that we're not all sitting around this table again a number of years from now, saying exactly the same thing—we know we have to get the waiting lists down. We know we have to have measurable outcomes.

I'm wondering if in that response you could indicate to us whether or not there are some innovative strategies and concepts that we can take from other jurisdictions that may be doing a better job than we are, who participate on this committee, so that we can help make sure that we remedy these things. But for all of us walking out of the room today, I think there is probably still a common concern. We know you want to get there, we're not sure how we're going to get there, and we want to make sure we can assist in what way we can to keep you on track.

**Mr Rzdaki:** Indeed, I think the only way you get to a certain place in time is with a good plan and an ability to measure whether or not you are achieving the smaller, achievable steps toward that long-term goal. I think the deputy had outlined earlier this morning some of the really critical, complex and important early steps we've been taking to tackle this question of outcomes and capacity and making determinations about where new investments need to be made.

The first steps really are to bring under a single roof the programs and services that make sense to be under-

neath one ministry and to ensure that what remains in other ministries—that we have important and effective working relationships so that the policies and programs that are developed in those other ministries and what we do are coordinated and in sync. The plans are to have a really good sense of the transfers into our new ministry over the next few months. I can't provide any more detail there but there is, as you can appreciate, some significant work that needs to be done to sort out what resources belong in the existing ministry and which resources come to ours. That's an important first step.

In terms of the more strategic planning and policy work that we need to do, work is broadly already underway, undertaken by a colleague of mine, to begin to look at what other jurisdictions have done to improve services for children prior to school and to enhance and improve services for children as they go through their phases of development and, in particular, journey through the important transitions in life, entry into school and that transition between elementary school and secondary school being two that we are learning quite a bit about. There are other jurisdictions that are alongside us or ahead of us in some respects in supporting children through those important transitions. So interjurisdictional work is certainly a phase that we need to undertake.

A third element, and these all need to occur concurrently, so I know that you appreciate the management of all this is quite complex: There is an important amount of work that the minister wishes to do to engage parents, service providers and experts in helping us chart a course toward a more integrated, more effective and responsive system with respect to wait-lists, as you mentioned. So the minister is holding a series of round tables across the province. She spent some time in a round table setting a few weeks ago in the Ottawa area. She'll be heading, I believe, to Peterborough a little later this week. There's an effort underway to develop a series of other opportunities for her so that she and we can engage in a dialogue about best practice, about outcomes and about what the research is telling us.

Alongside these regional round tables which were meant to engage children, parents, youth and service providers, we are also hoping to engage experts in expert panels. One certain important one to have would be to bring the great wealth of research expertise that we have in this province together around a table and really talk about what we mean when we say we need to do better for children. We need to be able to measure that with a view to certain outcomes. We know other jurisdictions have journeyed this path and have made determinations about what our key outcomes will be. Will it be readiness to learn? Will it be a certain level of cognitive development? Will it be a certain level of social development? How do we actually want to measure the impact of our services, and what are we capable of measuring? These are very significant, very tricky issues that we like to seek out a lot of advice on, and have been advised by other jurisdictions here that have travelled this path—perhaps not in a fashion as we are about to—that you

need to take the time to engage the people who know about this. So we certainly plan to do that.

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In terms of the children's mental health system and how we hope to move along with this broader strategy to look at the broader children's services system, we made some commitments when we had the opportunity to respond to the auditor's report. They are published in his report and are public. Since that report has been released, we have worked with the current government to fine-tune and refine our approach so that it is consistent with this tremendous amount of work that we're doing on the children's services system more broadly. So what we'd like to do is undertake, as we've said, a review of the children's mental health system to verify the nature and scope of the services being delivered currently and to assess the overall effectiveness and efficiency of these services: Are they being delivered now in a way that meets at least our contractual obligations or expectations of agencies to identify areas of improvement, but most importantly, identify where the government needs to consider a new or expanded or clearer policy direction?

So the review will help us get to the work we need to get done and have committed to doing around wait-lists. It will get us to a point of understanding how assessments are being provided, where the gaps in the service system are, how our resources are being used now and what steps we need to take to reallocate not on the basis of traditional or historical funding per se but in a way that best meets the needs of communities.

That review I think is going to be informative. It will help us move to the important work we need to do around core services. We spoke a little bit about that today: What can, and should, parents expect locally in their community to be provided for children with mental illness; what can we support more regionally; and what, in terms of very specialized services, are we up to the task of providing on a provincial level? With that alignment of services and a better understanding of what those are, we can then work to clarify rules and responsibilities better in the community among community service agencies, among hospitals and other agencies we're providing children's mental health services to.

There are many steps I've listed. The most important for this particular system are really the fact-finding under our review and then the work we need to do to align our resources to ensure that we've got local, regional and province-wide core services very clearly defined.

We expect to have this work done within the next year. We would hope to be in a position as the broader strategic planning around children's services—and I know you can appreciate that that's very complex work and portends some enormous change for the way we deliver services, but most importantly, improvements to services for children. Our expectation is that as this evolves over the coming months and year, we'll be able to work within that broader framework to have within a year a clearer sense of what the core services for the children's mental health system should be in Ontario.

**Mrs Munro:** I have three quick questions. We talked earlier about the problems of gaps, where in a community there hasn't been an agency that has seen a need and come forward, and inconsistencies that might create in terms of service delivery. You have talked certainly in your fact-finding about the approach that you plan to ensure that there aren't gaps.

As someone who represents part of the fastest-growing area in the province, I believe, obviously this is of concern to me and perhaps from a different perspective. I wondered if you could comment on how you plan to address, in the thinking and in the planning that you've just described, the issues around demographic changes. Clearly, there are communities such as mine—40,000 people move annually to York region—but we also know that there are communities in the province which have either a static population or in fact out-migration. What is your concept at this point in terms of addressing issues such as that?

**Mr Rzakki:** Our approach in principle would be to strive for allocation of funding to best meet children's needs regardless of where they are. What we have done in the past is structure our funding around our regions and, in turn, they have structured funding allocations to agencies, on a mix of both an historical basis as well as on the basis of changes in demographics and population growth. So we have currently a mix of approaches that we use to fund children's services. Our main objective would be to look at all the ways that we fund all of our children's systems and determine what approaches we can bring to bear on that series of funding formulas and approaches that will more accurately put money into the communities where the need is the greatest. I think that's a principle that any community would expect us to be striving toward.

That means, though, a process of ensuring that we really, truly understand the connection between population growth and need. There is literature, for example, that suggests that need may be defined more on the basis of income level as opposed to population growth. So we need to look at funding approaches that consider a range of variables, including the socio-economic status of the population in communities, including historical needs, including resources that exist or do not exist in other parts of the system in that community—for example, the health care system and the education system. There is a broad range of variables and we need to do a lot of work to understand what is the best approach. But the principle of getting dollars to where the need is is the one that is right in front of us, clearly, and we do understand from our experience that historical allotments or allocations aren't keeping pace with demographic as well as socio-economic changes in our communities.

**Mrs Munro:** The second part of my question has to do with following along on that. I'm quite sure you're familiar with the work that has been done in York region, where there has been an historic underfunding and obviously a great sensitivity to the situations which we heard of earlier, that so much of the funding had been

done on an historic basis, with agencies receiving monies they've received before and looking at inflation and things like that.

I wonder whether or not you have considered the model that has been provided to you, as a ministry, with regard to a method where you would be looking at much of the same logic that Rozanski used in looking at updating the funding formula in education. Obviously, at the end of the day we all recognize that a child in need is a child in need, regardless of where that child is in the province. I wonder if you had considered a funding formula following along the same kinds of principles as were established in that exercise.

**Mr Rzdaki:** We haven't yet completed or defined fully the project before us to examine the way we fund, but the principle would be that we'd be looking far and wide at approaches that would bring about some of the improvement we've talked about in how we fund. At this time, all I can say is that as we take a serious look at funding models and approaches, we're going to take a wide look at what's available and what has been the recent experience in Ontario in human services funding, as well as recent experiences in other jurisdictions.

**Mrs Munro:** My third and final question: In those discussions, are you considering—I understand there is a significant difference in salaries between people who work in children's mental health and people who work in adult mental health. Correct me if I'm wrong, but if not, are you looking at some of those discrepancies as well?

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**Mr Rzdaki:** We certainly have benefited from the work that agencies have forwarded to us about their own situations, the work that Children's Mental Health Ontario has done to examine the wage and salary differences across their agencies, to come up with average levels of differences. We know that for some agencies, as we talked about earlier today, their salary pressures are certainly challenges that they are finding very difficult to manage. We know there is quite a variability across agencies in the children's mental health system with respect to salaries and wages.

To the extent that human resource capacity is an issue in some agencies, we know there are high turnover rates. It's very difficult to keep staff, let alone recruit them. We know there is anecdotal evidence that folks who are working with children, either in children's mental health settings or other developmental services settings, child welfare settings, are multi-disciplined in tasks and highly qualified and move often within the system and across systems to find work that is perhaps more rewarding financially.

I think what we need to do as part of our review is to understand much better what these pressures are, to continue to rely on the work that agencies and the association have done to help us understand that better and to articulate much more clearly for ourselves the true human resource demand, which we're finding exceeds the supply of qualified, experienced individuals, very much like the pressures we face in the health care system,

which has enjoined a national and provincial effort to study and come to terms with that.

The pressures we are foreseeing and are already experiencing in terms of attracting youth to seek out jobs and vocations in social work, in supporting and providing children's services, are seemingly insurmountable. We need to be looking at ways we can understand what the true demand for qualified, professional human resources is in the provision of children's services and determine what steps government can take, not just at an agency level where there are salary, recruitment and retention pressures, but more systematically what we can do to encourage more Ontarians to seek careers here or indeed to attract others from outside our jurisdiction to come here and bring their expertise so that our children can be served.

**Mr Qaadri:** My question first of all is about mental health as it intersects with the youth criminal justice system. I understand that the Minister of Children's Services, newly endowed, will actually be inheriting that particular portfolio from the Ministry of Community Safety and Correctional Services. Obviously we need to continue the custodial function, but it seems to me that a lot of the individuals who are, to use your phrase, youth in conflict with the law are actually, in reality, suffering from various mental health disorders. What I'm asking particularly is, in inheriting youth criminal justice, will the Ministry of Children's Services be able to offer them services they may not otherwise have received, with a view to reclamation, rehabilitation and reintegration into society?

**Mr Rzdaki:** Yes, I believe so. I think the advantages and benefits of the integration of youth justice services into our ministry will best be felt at the policy and program planning level. It is true—and it is something we haven't spoken much about today but could well have—that the children's mental health system is absolutely integral as a supporting early intervention system for the education system, but also to prevent children from needing the services of our child welfare agencies and certainly to help children before they find themselves in conflict with the law. So, many would say that if only we could have a stronger children's mental health system that intervenes early, ahead of the need for services elsewhere, our children would certainly be better off. I think that, ideally in the long term, earlier interventions around mental illness or social or emotional behavioural challenges that children and youth have are critical investments for a government to make.

In the youth criminal justice area, as we go through the integration of the young offender's capacity for 12- to 15-year-olds and that of 16- and 17-year-olds, and as we embark to follow some of the principles under the Youth Criminal Justice Act which really do ensure that youth in conflict are steered toward community and community supports early on, as a response to their offending or their conflict, I think we need to ensure there are services in the community to support some of the underlying mental health issues those children have. So bringing the pro-

gram and the policy responsibility under the same roof where children's mental health policy and programming are developed and where child welfare policy and programming are developed is a tremendous first step to ensuring that these systems are planned with the interdependencies in mind.

**The Chair:** Just before I turn to Mr Arnott, I hope you will be seeking a significant amount of compensation from the federal government for these programs, as they were unilaterally thrust upon the provinces in a lot of ways over the last 20 to 25 years, because the requirements of the justice system are significantly more now, after the new Youth Criminal Justice Act, compared to before. The options of incarceration as a penalty are probably four or five times what the provinces have to provide in services. I would hope we get significant compensation, which was originally promised at 50% but has been far below that kind of compensation way back in 1982.

Mr Arnott.

**Mr Arnott:** We're now probably 15 or 20 minutes away from concluding this discussion. I want to thank you for your thoughtful answers to the questions today. I think the information you have provided has been very helpful for all of us. I just want to say that at the outset.

I want to return to the issue of waiting lists for children with autism. As was pointed out in the auditor's report, there was a significant waiting list issue for these children, and you indicated, in response to another question this afternoon, that there still is a waiting list issue. Perhaps some progress has been made, but in other areas there are more challenges. We're aware that the former government committed to spending almost \$100 million on children with autism by the year 2006-07, including establishing a new program, about \$19 million, to assist children over six years old. We're aware that there was a commitment made during the election campaign, or perhaps before, by the now Premier of the province that assistance for children with autism would be expanded to children beyond age six, and we're also aware that in a number of court cases the government is currently taking a different position, arguing against the interests of some of the parents who have brought this issue forward. I'm also told that the Minister of Children's Services has committed to putting in place a plan of some sort on how she will deal with autism issues and she's expected to conclude that in about two months. You mentioned there is an ongoing consultation and planning exercise that will conclude in about a year. Is this the same plan we're talking about or a different one?

1450

**Mr Rzakdi:** Indeed, the minister indicated a few weeks ago that she would ask the ministry to develop some solutions for some of the issues that children with autism are facing, with respect to the capacity of our program and with respect to services for a wider range of children with autism. That is work we are doing and are going to be doing in co-operation with others in government, in the education and health care systems, who have a need to be working with us, and is a process that, as the

minister has outlined, will involve some discussions with parents and experts, so that her review of the programs that are in place and have yet to be put in place can be guided by good advice and with the widest possible opportunities and options that are available now. It's work that's happening on a different timeline, and certainly one that's much sooner than a year.

**Mr Arnott:** Of course, the larger consultation that's going on, which the government has initiated, is the pre-budget discussion; I know there are town hall meetings taking place. The standing committee on finance and economic affairs has its consultation, which is an annual process, and the Minister of Finance is engaging people in other private, public and semi-private consultations. If the minister were able to put all this together by March 21, in theory one would hope that information would be made available to the Minister of Finance and there would be some significant announcement in the budget this year that would go some length to following through on the Premier's commitment.

When we talk about waiting lists and the aggregate nature of the problem across the province and deal in the statistics, we sometimes unfortunately overlook that with each individual statistic there is a family. I was speaking to the grandparents of a child with autism today before I came into this meeting, constituents of mine who live in Wilmot township. Their grandson, who is 10 years old and whose name is Kieran, has autism. For the last almost nine or 10 years, his parents have been paying for private therapy, because they were unable to access the kinds of services they felt they needed. They've spent tens of thousands of dollars over this period of time. They're a family of average means, from what I can understand, so they've sacrificed a great deal to ensure that Kieran has the best possible start in life that he can have.

Speaking to his grandparents, who spend a lot of time with him, obviously they're very concerned about this issue. They were telling me that most recently, when he turned eight years old, one of the behaviours he exhibited was running away from home. Of course any of us who are parents can imagine what it must be like when your child is away and you can't find them. It was an extremely stressful situation when Kieran was visiting his grandparents and this happened when they were looking after him. We can only imagine what this must be like, and I think there's an obligation on the part of the government to make this a priority.

Certainly being in government is a challenging situation to find yourself in, but it gives you the opportunity to make positive change in society. Certainly there are financial constraints that the government faces, and we all know that. At the same time, I think we all recognize that being in government involves making decisions on priorities. I would hope this particular need is given a very high priority in the months and years ahead.

Do you care to respond?

**Mr Rzakdi:** Thank you for the comment. While I can't respond to any particular situation or case—it would be inappropriate for me to do that—I think it's a

difficult time for government to be examining and undertaking new policy work and program work while there are other issues of a different nature, a legal nature, being determined and examined in other forums, but we are bound and determined to do that. I think the minister is very keen to take a wide look at what might be an improved response from government to families who have children with autism and to those children. As I said, the timeline is tight and soon. We're working hard with the minister and the government to examine the opportunities.

**Mr Arnott:** Thank you.

**The Chair:** I guess we're finished for the day. I'd like to thank you for your presentation and your help to the committee. As I said to the Deputy Attorney General yesterday, there is an opportunity for you to respond to any questions you feel may need to be filled out; you can forward that to our researcher. I ask you to do that within a month or so, before we get down to writing reports and those kinds of things.

I invite the committee to stay for a few minutes so we can perhaps give our researcher our overall views of this part of the auditor's report and the response to it.

*The committee continued in closed session at 1455.*







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#### **Substitutions / Membres remplaçants**

Mr Bob Delaney (Mississauga West / -Ouest L)

Mr Ernie Hardeman (Oxford PC)

Mr Phil McNeely (Ottawa-Orléans L)

Mr Shafiq Qadri (Etobicoke North / -Nord L)

#### **Also taking part / Autres participants et participantes**

Mr Ted Arnott (Waterloo-Wellington PC)

Mr Walter Bordne, director, children's services portfolio

Mr Jim McCarter, acting Provincial Auditor

#### **Clerk / Greffière**

Ms Anne Stokes

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# Official Report of Debates (Hansard)

Wednesday 11 February 2004

# Journal des débats (Hansard)

Mercredi 11 février 2004

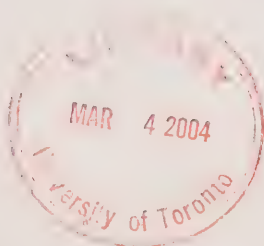
## Standing committee on public accounts

2003 Annual Report,  
Provincial Auditor:  
Ministry of Community  
and Social Services

## Comité permanent des comptes publics

Rapport annuel 2003  
Vérificateur provincial :  
ministère des Services sociaux  
et communautaires

Chair: Norman W. Sterling  
Clerk: Anne Stokes



Président : Norman W. Sterling  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Wednesday 11 February 2004

Mercredi 11 février 2004

*The committee met at 1047 in committee room 1, following a closed session.*

2003 ANNUAL REPORT,  
PROVINCIAL AUDITOR  
MINISTRY OF COMMUNITY  
AND SOCIAL SERVICES

Consideration of section 3.03, Family Responsibility Office.

**The Chair (Mr Norman W. Sterling):** My name is Norm Sterling. I'm the Chair of the public accounts committee. Welcome to our committee. Perhaps I will turn it over to you. You can introduce yourselves and make some opening remarks, and then we'll go to questions immediately thereafter.

**Mr Kevin Costante:** Thanks, Mr Chair. My name is Kevin Costante. I'm the Deputy Minister of Community and Social Services. With me today are Sharon van Son, the executive director of the Family Responsibility Office, as well as Pamela King and Melanie Herbin. Should I just start with remarks, Mr Chair?

**The Chair:** Yes, please do.

**Mr Costante:** First of all, thank you for having us today. I think it goes without saying that the staff of the ministry and the office believe very strongly in the essential service that we provide to Ontario children and their parents, and we're pleased to report on the progress that we've made to improve our systems and programs and processes. We value and appreciate the work that the Provincial Auditor does, and we welcome the opportunity to discuss the auditor's comments and findings and recommendations and have a good discussion here today.

I want to start by giving you a brief overview of the Family Responsibility Office—or FRO, as it's more commonly known—our mandate and direction for the future. As well, I want to briefly comment on some of the details of the improvements that our minister announced just last Friday, I believe. Then I'll move from there to talk about specific comments from the Provincial Auditor's report and update the committee on the steps that we've taken to address those concerns.

To start, FRO is a statutory program within the Ministry of Community and Social Services and operates under the authority of the Family Responsibility and Support Arrears Enforcement Act of 1996. FRO works with the parents to help them fulfill their family support

obligations, enforces the separation agreements and domestic contracts that are filed with the courts, and ensures compliance with support orders with reciprocating jurisdictions.

The work of FRO has a significant impact on Ontario families, directly affecting the lives of more than 700,000 families and children in virtually every community in this province. FRO is a neutral enforcement program that ensures compliance with support orders, such as court orders, private support agreements filed in court and orders filed with reciprocating jurisdictions. We aggressively pursue arrears. We perform trace-and-locate duties to find support payers. Currently FRO handles more than 184,000 active cases in Ontario, including more than 12,000 cases from other jurisdictions. FRO has reciprocal agreements in place with more than 85 jurisdictions across the world. The number of cases is growing. There are about 1,200 to 1,400 new cases each month. There are, as you would expect, cases closed each month, but the number of new cases does exceed the number of cases closed each month.

In 2002-03, FRO collected \$561.1 million in court-ordered support payments for parents and children. FRO works to ensure that the funds are received by recipients in a timely manner. In fact, 95% of the payments received are processed within 24 to 48 hours. By enforcing support orders, FRO reduces the amount of need for social assistance benefits, which can be a factor in reducing child poverty. In addition, Ontario Works and the Ontario disability support program use FRO payment information to verify income and entitlement of social assistance recipients. Approximately 17,700 or 10% of FRO's total files are assigned cases. FRO directs payments to Ontario Works or ODSP to offset social assistance benefits provided when family support payments are left unpaid.

As you can imagine, FRO is a very busy place. We answer approximately 1,900 calls each day, and our automated 24/7 client information line answers 17,000 calls each weekday and 11,000 calls on the weekend.

We also work hard to ensure our clients understand their rights and obligations. For example, our plain language committee is updating all standard FRO letters and publications, and we conduct workshops and information sessions with courts, lawyers and social assistance delivery agents, as well as the public and other stakeholders. We work closely with MPP constituency offices. Every MPP's office is assigned a designated client

service associate to respond to FRO-related client inquiries, and we handle about 1,300 of those each month.

Mr Chairman, we've also noted that the auditor found several positive areas of the FRO's operations, which we'd like to note. The auditor made mention that cases were registered and collection action was initiated within the targeted 30-day time period; that accounting controls over support payments received and disbursed were satisfactory; and that support payments received were generally disbursed within 48 hours.

We know that we all share the same goal: to ensure that families and children get what they are owed. However, we are limited in our ability to address many of the specific audit recommendations with our current service delivery model. It is important to keep in mind that the auditor's report represents an overview of FRO in late 2002 and early 2003. Since that time, we have acted on a number of the auditor's recommendations, such as implementing a new document management system, our recently announced trace-and-locate initiative, and our strategy to increase aggressive enforcement action, although we acknowledge there is still a lot more to do.

As we move forward with our improvements to FRO, we will use the comments and findings of the auditor to help inform us and guide us in our path forward.

I'd now like to deal with some of the specific recommendations of the auditor, and I'll start with information registration. The auditor stated that FRO "should ensure that it receives all the required information for registering and enforcing support obligations on a timely basis and promptly initiate follow-up action when it does not." In many cases, FRO does not have full control over gathering all the information it needs to enforce and register support obligations in a timely manner, because by necessity FRO relies on others, such as the courts and lawyers, to provide that information. However, we recognize this difficulty, and FRO will continue to work with our stakeholders through workshops and information sessions so that they understand the requirements.

Currently, consistent and timely follow-up is strongly hampered by our technology, not being able to provide bring-forward notes and automatic reminders. I'll talk more about that. This is one of the reasons why we're looking at changing our technology and reorganizing the way that our office works. If we can do that, we anticipate that we'll see significant improvements in the case registration process and the follow-up.

FRO is also undertaking a review and redesign of our filing package—this is the initial package of documents that we give to new clients—so they better understand the information that is required. Our plain language committee is reviewing our filing package with an eye to simplifying, where we are able to do so.

Another recommendation of the auditor was that FRO ensure that case documentation be scanned at an acceptable quality and that system downtime be minimized so the necessary case documentation is available on a timely basis.

Last year, FRO did implement a document scanning system that is faster, more efficient and meets our business needs. We have supported that with ongoing staff training and continuing monitoring of policies, procedures and adherence.

In the next recommendation, the auditor said that we should ensure "effective and timely enforcement," that FRO "should review its case management practices and consider assigning ... each case to an individual caseworker."

Since 1996, FRO has operated under an issue management system rather than a case management system. We have developed a proposal for an integrated service delivery model that includes assigning each case to an individual staff member, supported by integrated teams for providing client service.

Our recently announced trace-and-locate initiative will also help address this concern. Staff will be following up on outdated client contact information much earlier, so that the risk of losing track of payers is reduced from the outset.

In order to make FRO more easily accessible to those who rely on it, we have established a dedicated customer service unit to handle calls such as address changes and reports about non-payment. Because of this, enforcement officers will have more time to handle complex enforcement calls, helping us to achieve higher compliance rates, increase revenues and decrease arrears, and also improve customer satisfaction.

The next recommendation had to do with the timeliness of administration of cases. To help improve family support case administration, the auditor recommended that FRO establish criteria and standards for manageable caseloads and staffing.

As I previously noted, FRO recognizes that it must move toward a case management system with supporting technology. We believe that a shift to a case management model like the auditor recommended will allow enforcement officers to focus on enforcement. As a result, we can then go to a small call centre that will handle general inquiries, and that would look after standard questions.

In the area of inquiries and enforcement, the auditor also made recommendations. To ensure that client inquiries and enforcement actions are dealt with appropriately, the auditor recommended that all caseworkers conduct necessary and timely follow-up.

FRO is committed to providing timely follow-up of client inquiries and enforcement. However, only when we have the new technology implemented with the appropriate tools, such as bring-forward notes and automatic prompts, will we be able to do this.

Regarding the enforcement of arrears: To help ensure effective enforcement actions in collecting support arrears, the auditor also recommended that FRO (1) identify accounts in arrears earlier and contact the defaulting payer as soon as possible; (2) adhere to the established timetable for the prescribed enforcement steps; and lastly, ensure supervisory staff monitor case files for compliance and, where necessary, take corrective action.

There are existing policies and procedures to help ensure effective enforcement but, again, we are hampered by lack of appropriate supporting technology. FRO has implemented a strategy, however, to increase aggressive enforcement action. Currently, all arrears over \$50,000 are assigned to an individual client services associate until the cases are in compliance. Our supervisors are regularly monitoring and acting on these cases.

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In terms of internal controls, to ensure that our internal controls are strengthened and that all support payments received are forwarded promptly, the auditor recommended that we follow up and resolve all items in both the identified and unidentified suspense accounts where money is held until verification is complete and that we adequately document the basis on which initially unidentified receipts were identified, and management approval of the release of such funds.

FRO processes more than 95% of the payments received within 48 hours, as I previously recommended. Only about 0.3% of total payments represent items in the identified and unidentified suspense accounts. Monies are usually diverted into suspense accounts for reasons beyond FRO's control; for example, the need to wait for a decision from the courts, correspondence from lawyers, a response from an income source that indicates some sort of change, or that there is no case identification provided. The funds are then released as quickly as possible from the suspense accounts after the required information is obtained. As the auditor indicated, most of the unidentified funds received are adequately researched and validated before the funds are released. FRO will commit to regular management control checks to ensure that the policies in place are being followed.

The next recommendation was with respect to charging interest on arrears. The auditor stated that to help ensure compliance with support orders and encourage prompt payment, FRO should calculate and charge interest on arrears where applicable. This is a recommendation that we've had, I believe, in previous auditors' reports. However, at this point it is not practical to calculate interest on arrears because our current technology is inadequate. The computer is unable to calculate and accrue interest owing. It is not effective or economical, as well, for our caseworkers to manually calculate this amount of interest owing, given the heavy workload that we have in other areas.

With respect to the next recommendation, the auditor recommended that FRO review its call centre operations and take steps to ensure that all calls are answered or are responded to within a reasonable period. FRO has taken several steps to make improvements in this area, including hiring a call centre coordinator, introducing a call monitoring process along with monitoring and coaching workshops, preparing a monthly snapshot report combined with more frequent performance meetings, and introducing a complaint and tracking form. Again, progress on this front relies on our ability to upgrade our technology.

The next recommendation had to do with expanding access to account information. The auditor recommended that FRO consider expanding access to detailed account information and the range of services available through the automated telephone line and Web site. FRO is in the process of implementing a personal identification number, a PIN. That project will provide more information and protected access for clients who call the automated voice information line. In March, we will implement phase one of the PIN project to enable clients to securely access an expanded offering of case-specific information on our automated voice response telephone system.

The next area was that the auditor called for a speeded-up implementation of the needed computer support for the office's operations. We wholeheartedly agree with the recommendation that we must replace this system, as well as introduce a new business model that will change the way FRO works.

In the area of enforcement, FRO agrees with the auditor's recommendations but is again limited to address these issues with the current technology that we have.

Regarding client satisfaction, to help increase client satisfaction and effectiveness of services, the auditor recommended that FRO log complaints from all sources to ensure that all complaints are addressed and that we categorize and analyze the complaints received from all sources to identify areas most in need of improvement. FRO is reviewing its process for addressing complaints. Although all complaints are logged, our technology limits our ability to characterize and analyze the different types of complaints.

The auditor also recommended that FRO regularly conduct client satisfaction surveys. FRO is planning to conduct a client service survey and use those results as a benchmark for future-year reporting. FRO will continue to collect customer feedback as an integral part of our plans to improve services and increase client satisfaction.

I think that ends the comments about the auditor's report. Mr Chair, at this time, I'd like to make some comments about recent announcements about improvements in the way that FRO operates, many of which relate to the recommendations.

As I stated last Friday, our minister, the Honourable Sandra Pupatello, announced improvements to how FRO operates and that these will be a top priority, that family responsibility is one of her top priorities and that the minister intends to move quickly to initiate changes. On February 6, she announced several new initiatives designed to alleviate some of these immediate challenges.

In summary, our ministry is going to be moving forward on three fronts: first, making immediate improvements to customer service; second, laying the foundation for significant long-term changes in the way FRO works; and third, launching a series of consultations across the province with FRO clients to get their input on further measures to improve the system for families and those who rely on it.

Making FRO more accessible is one of our priorities. FRO has established a dedicated customer service unit of 26 staff to divert administrative calls away from the

enforcement office. This alone will enable the enforcement office to answer up to 1,600 additional calls each day.

FRO will soon implement, as I mentioned, a personal identification number, a pilot project to enable clients to securely access an expanded range of case information on the automated voice response telephone system. The use of the personal identification number will be phased in after the conclusion of this pilot project.

The enforcement of support orders will be a priority. The customer service unit will divert routine calls away from the enforcement staff, freeing them up to focus solely on enforcing court orders and getting support payments to families.

FRO has also created a special trace-and-locate unit to focus on tracking down deadbeat parents. This new unit will have access to databases across the province, such as the Ministry of Transportation's database. The unit will be conducting an extensive search on 2,500 pieces of mail returned each month because the parent has moved without forwarding us a new address. As soon as the parent's new address is confirmed, FRO will immediately begin enforcement action.

Another initiative that we will take is that FRO will issue a notification letter to parents who are more than 60 days behind in their support payments, asking them to contact FRO within 15 days to make payment arrangements. Parents who do not respond within the time frame will be notified that their debt will be reported to the credit bureau. The 15-day notice period is expected to encourage more parents to meet their obligations in order to avoid damage to their credit rating.

We will also be moving to help employers understand their obligations. More information will be added to the FRO Web site, starting with new information for employers who submit payments on behalf of employees who owe support. Employers can look forward to a new section with information that will help them understand their role and responsibilities in making support payments. Employers can also complete forms on-line and print them for mailing to our offices.

We will also be reaching out to clients. New clients will be contacted when they are registered with the program. FRO will provide them with information to help them understand the program, review their court order, answer questions, and point out any problems that could delay payment. Currently, many of FRO's problems in enforcing support orders are due to incorrect or incomplete information provided at the outset.

We also want to lay the foundation for long-term change, as I mentioned, as one of our priorities. The province issued yesterday, I believe, a pre-release for a request for a proposal for the technology that would lay the foundation for long-term change and support the Family Responsibility Office's move to a new business model that will fundamentally change the way this office works.

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The new technology will give staff needed tools to support the implementation of a case management model.

This case management model is used by most other enforcement jurisdictions across North America. This model would replace Ontario's outdated assembly line business model, a model that for many years has not been able to effectively promote accountability and efficiency. It has not been able to track accounts for enforcement actions, nor has it been proactive in managing the business. It has relied almost exclusively on clients flagging problems to us. To acquire the software needed to support the new case management model, we will use a two-stage competitive procurement process to ensure that there is fairness and accountability, and we launched the first stage yesterday.

The ministry, as I said, will also be consulting with our partner ministries to determine which databases can be shared, to move easily and quickly to locate parents who are not paying their support.

To help them learn how to better access FRO on behalf of their constituents, MPPs will have an opportunity to be briefed on FRO. MPPs across the province will be holding a series of round-table discussions in their local communities with people who are actually using the system.

We know that these will be the first improvements. They won't solve all the problems by themselves, but they will make a difference and will move ahead in addressing the auditor's concerns. We think we have set the stage for fundamental improvements to make a huge difference in the medium to long term.

In conclusion, Mr Chairman, I'd like to thank you for your patience in hearing my comments. I'd like to end by thanking the auditor for the support and guidance.

**The Chair:** Thank you very much, Deputy. I believe that you answered succinctly many of the questions that perhaps many of us would have originally asked. I'm going to ask Debbie Matthews to have the first question. She is the parliamentary assistant to the minister. Ms Martel is also on my list at this time.

**Ms Deborah Matthews (London North Centre):** The first comment I want to make is that I think we should all remember, as we immerse ourselves in statistics and paper, that what we're talking about is kids. We're talking about kids and their ability to have their most basic needs filled. Kids are counting on us to take the responsibility that we have been legislated to take. Let's remember that as we carry on today.

FRO is not a new problem. It has been mentioned in every auditor's report since 1994. That's a full decade where reports have identified the computer system as needing serious improvement, and the auditor has called for a case management system to be implemented over the past decade. However, it appears that problems have worsened rather dramatically over the past 10 years: the caseload has gone up for our staff; the arrears have continued to climb; the cost of social assistance has continued to climb; and customer service is at what can only be described as abysmal levels.

Can you explain why FRO has been so neglected over the past decade, why we have neglected our responsibilities under the Family Responsibility Office?

**Mr Costante:** It's hard to explain why. I think the key piece is in investment, that there needed to be a priority placed on the operations of FRO and the importance that it does have in serving families and children, as you so rightly pointed out. There needed to be an investment in a modernized computer system. The system they have is not appropriate. There needed to be investment in staff.

Again, you pointed out that several auditors' reports, I think, mentioned that, going back to 1994. I think what we have done over the last several years—the staff have done; I'm fairly recent to this portfolio—is a lot of research on the case management approach. They've done a lot of research on the type of computer support that we need. The minister is supporting us to move forward with those much-needed improvements.

In the meantime, we're going to take whatever steps we can take—the minister announced some of those steps last Friday—to have immediate service improvements, because you're right that our level of service is not adequate. But what we really have to do, and it's going to take us some time, is make those fundamental changes so that we have a system that serves those families and children that is effective and does what it needs to do for them and that we can be proud of as a province.

**Ms Matthews:** Thank you.

**Ms Shelley Martel (Nickel Belt):** Deputy, it's good to see you again.

**Mr Costante:** Yes, I'm back.

**Ms Martel:** Might not be by the end of the day.

I want to start with the computers. Can you tell me when cabinet approved the decision for the new service delivery model and computers?

**Mr Costante:** It was just in late December.

**Ms Martel:** Can you tell me how much money cabinet or management board has agreed can be spent on computers?

**Mr Costante:** Our approach here is going to be to issue a pre-RFP to make sure we have documented the requirements adequately and people understand it. Then we will be issuing a full RFP. So we will get that response back about cost at that time.

**Ms Martel:** If I might, I understand that you'll have to go out and get some estimates of cost. But in order for this to be cleared from cabinet, I would assume you've got some direction from cabinet or Management Board, probably more specifically, about the upper level that can be spent for this project. Can you tell us what that is?

**Mr Costante:** If I might, I'm a little nervous about putting a number on the table when we're going to be going into an RFP process. I think that it could set the amount that the proponents who want to bid on this—I could give away information. I don't know.

**Ms Martel:** The Toronto Star reported up to \$40 million and the minister on Focus Ontario went from between \$10 million and \$40 million. That's what she told Graham Richardson. Is that correct?

**Mr Costante:** We're in that ballpark, yes.

**Ms Martel:** All right, and is this buying us a new computer system versus enhancements—

*Interjection.*

**Ms Martel:** Pardon me?

**The Acting Chair (Mr Jim Flaherty):** Nothing. It was just about the size of the ballpark: \$10 million to \$40 million.

**Ms Martel:** It's interesting.

I want to be clear that this is a new computer system, not money for upgrades or enhancements.

**Mr Costante:** Yes, this is a new computer system. We are not thinking or hoping that we'll have to design every inch of it from scratch.

**Ms Martel:** Because you said there has been lots of research done in what is needed, I'm assuming you might have looked at other provincial jurisdictions and I'm wondering (a) if that's the case; and then (b), why it would take two years to actually implement a system here.

**Mr Costante:** I might ask for some assistance from the folks who actually did the research.

**Ms Sharon van Son:** Good morning. My name is Sharon van Son. I'm the executive director of the Family Responsibility Office.

We have been, as the deputy has indicated, doing a lot of work in doing research. There are enforcement jurisdictions all across Canada that do the same kind of work that we do. There are enforcement jurisdictions in the United States, Europe, Australia and New Zealand. Over the last while we have been doing our homework to see what's out there. I think the approach we would want to take is to not develop a model from scratch but to look at what's out there, what has proven technology, a structure that works, that we know works and has the experience around that.

So it's not a small undertaking. We didn't become the way we are now in a short period of time. It's going to take a long time or a fair bit of time to correct the problems. We want to do it right. We don't want to make mistakes.

Not only are we talking about technology, but we are fundamentally changing the structure of our organization. Right now, we're a very kind of labour-intensive structure. It's kind of, I hand the paper to you and so on and so on, and we need to fundamentally change that. We need to move to a new business model. Part of that is the technology that would support that model.

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**Ms Martel:** I understand that, but it's not as if the FRO has not been working on looking at this very issue. The first report about new technology was in 1994. There was certainly a huge focus on it in 1999 and again in 2001; that's just from the auditor. The Ombudsman, and at least three of Clare Lewis's reports and probably two of Roberta Jamieson's, talked about a need for technology, and at one point money was allocated by Management Board under the former government to actually have a look at this. So I'm thinking that preparations around this started not just with the minister's announcement or even a couple of months ago but probably a couple of years ago. This leads me again to the ques-

tion—the minister said in her remarks that it might take two years. I'm assuming much more of that work has already been done and it shouldn't take us that long to get a new system up and running here.

**Mr Costante:** I think we're going to have to go through this. I would love to come back—and I suspect I'll get invited back in a couple of years—to report that we could do it quicker than that. Large technology projects are tricky, and you and I have discussed some of them in the past.

**Ms Martel:** We have.

**Mr Costante:** I think we've learned some lessons the hard way and we want to do this right. If it's going to take two years to go through a proper procurement process, get it implemented properly, get people trained on it, have an adequate transition period from an old system to a new system—we are talking about hundreds of thousands of clients—I don't think that's unreasonable. Yes, we have been doing a lot of work and staff has done a lot of work, and I'd love to come back and report that we overachieved or underachieved the time period, but I guess my advice is, let's not rush this.

**Ms Martel:** You said the government yesterday did the pre-release for technology. What's the due date for that?

**Ms van Son:** The pre-release is a new process in terms of allowing us to—it's not a binding process but it allows us to understand if there are interested vendors out there. It also allows us to get good feedback from these potential vendors if there are areas within the RFP that are what we refer to as showstoppers that we can then go back and fix and then we can release the RFP itself. I believe the time frame for the pre-release is eight weeks.

**Ms Pamela King:** Four weeks.

**Ms van Son:** Four weeks. So the pre-release, again, is just a process to find out what vendors are interested in this undertaking and to also give us a good indication if there are problems with the RFP that we can go back and fix. That process is four weeks.

**Ms Martel:** If I might just get a timeline for the process after that: four weeks for the pre-release, you'll get expressions of interest from vendors, and what happens then for phase 2?

**Ms King:** We are required to report back on the outcome of the draft RFP process. Following that, the final RFP will go out for 12 weeks.

**Ms Martel:** Does it go back to Management Board in between phases 1 and 2?

**Ms King:** Yes, it does.

**Ms Martel:** I have a question for the deputy. Deputy, you will appreciate this better than anyone else in this room. Can you guarantee that under no circumstances will the ministry allow Accenture/Andersen to bid on this contract?

**Mr Costante:** This is an open RFP.

**Ms Martel:** Oh, Deputy, don't say that.

**Mr Costante:** One of the things we will be using through the procurement process is a fairness commissioner, to make sure that we have an outside set of

eyes that this procurement process is done absolutely 100% according to the procurement rules.

**Ms Martel:** Just to be clear, you cannot guarantee that Andersen or Accenture won't show up at the table or even indeed might be awarded this contract?

**Mr Costante:** That's correct.

**Ms Martel:** I'm just going to read into the record, if I might—and then I'll stop—what the current minister had to say about Andersen, because I just can't believe she wouldn't want to guarantee that Andersen/Accenture won't be allowed anywhere near this. This is from Hansard, April 2000: "This speaks to the fact that the privatization of that contract with Andersen Consulting, which we have said from the beginning is a boondoggle that takes money from the taxpayers in a very inappropriate manner," and she went on. I have a whole package. I just can't believe the minister herself wouldn't want to keep Andersen at bay. So I hope, at least from my perspective, you will tell her that I remember what she said in Hansard—it's on the public record—and she should do whatever she can to make sure we're not in the same horrible situation you and we were with Andersen over the last number of years.

**Mr Costante:** We are intending to do things much differently through this contract. This is a different type of procurement. The other one was a common-purpose procurement; this is a standard RFP process where we spell out in great, gory detail our requirements. I think staff—and Sharon or somebody can correct me—put out about 500 pages on MERX yesterday with the detailed requirements of this. So this is a much different thing. We think we have learned some of these things. The procurement rules of the government require us to make this an open and fair process. We're not allowed to discriminate against individuals or individual firms.

**The Chair:** I might add that the auditor is pleased because he at one point in time worked for Andersen.

**Mr Jim McCarter:** That was a long time ago, Ms Martel.

**Mrs Liz Sandals (Guelph-Wellington):** Just to follow up on that, I'm assuming that when the final RFP goes out, one of the components will be some evidence of past performance from the people making the proposals.

**Ms King:** Indeed. Yes, it will be.

**Mrs Sandals:** Very good. That may solve the problem.

**Ms Martel:** Oh, I don't know. If you've been around as long as I have been—we're still paying them at ComSoc.

**Mrs Sandals:** One of the things that has struck me as I've been going through various sections of the auditor's report is that of the ones I've looked at so far, this seems to be the one in which most often the auditor notes that the ministry staff is actually agreeing with what the auditor has to say. On page after page we seem to find, in response to various things, "We understand that the business case was being reviewed by the minister. Should we receive approval from cabinet to implement the

service....” Just flipping through pages, “We understand the minister is reviewing the business case. Should the office receive approval....” “The ministry is currently reviewing the proposal and it’s to go forward to cabinet,” they are hoping. “The move is pending the ministry’s decision on the options provided.” “Only when a new case management model with supporting technology is implemented can we comply.” “Compliance is hampered by the current issue-management business model and lack of appropriate technical support.” “Until the office has new supporting technology....” I can keep going through the pages, but I think I’ve made the point that in virtually every recommendation, the response is, “There is a business case. It has been put before the minister. We hope it will go to Management Board. We hope it will go to cabinet.”

Between the time of the auditor’s writing of the report, or at least review of the ministry in March, and September, did any of this in fact happen? Did you receive any ministerial approvals or any other approvals to go forward with the business case, with the switch in case management models or with the new technology?

**Mr Costante:** Sorry, were you asking whether anything happened in the period from March to September?

**Mrs Sandals:** From March to September 2003, because the auditor was writing from the point of view of March 2003.

**Mr Costante:** I think the quick answer is no. The approvals to proceed occurred in December, as I previously replied to Ms Martel.

**Mrs Sandals:** So despite the fact that this has been documented over and over again—Ms Martel went through the list of things that had been studied and proposed and on and on—there are in fact no approvals that have been given by the previous government, and here we find ourselves today.

1130

One of the things that I found interesting in doing a little bit of digging around is that we’re talking here about a 67% compliance rate, I believe it is, with full and partial compliance.

**Mr McCarter:** It’s 65%.

**Mrs Sandals:** So approximately two thirds. I’ve been doing a little bit of digging around, and I understand that the definition of partial compliance may be slightly different, but it would appear that in BC, which has what people seem to think is a fairly exemplary model, there is 40% full compliance, 52% partial compliance, for a total of 92% compliance. It would seem to me that that dramatic difference in compliance rates highlights the sort of problem we have.

**Mr Peter Kormos (Niagara Centre):** Their car insurance ain’t shabby either.

**Mrs Sandals:** That’s a different topic, Peter. You can’t jump topics that broadly.

But given those sorts of obvious failures in Ontario around compliance, how did we get into this mess of escalating non-compliance? Over years and years and years we seem to have had a major problem where,

which is evident to everyone, but really not much movement in addressing it.

**Ms van Son:** If a may answer the question, this is a very complex issue. This is about families whose marriages have broken apart, have fallen apart. People go into marriages with great intention. It sounds hokey: They fall in love, they have children and they think they’re going to live the rest of their lives with each other. Unfortunately, not in all cases does that happen. The divorce rate has been increasing every year. Last year nationally it was 3%, and in 2003-04 it was 3%.

The way FRO is currently structured, which is really the nub of the problem, is that we are completely reactive. Enforcement programs are all about relationships. They are all about the relationship that we have with our clients. They are about the relationships that people have with each other. If you are not able to establish or develop a strong working relationship with the payer—because that’s where we’re going to be successful, the person who has to pay the support. Whether it’s child support or spousal support, you have to have an enduring working relationship with that payer.

The way we are currently structured is that everybody knows, and it has been documented over and over, that when you call in to our office you never get to speak to the same person twice. So our ability to develop that working relationship—on average, we work on a file for 12 years, because unfortunately when families break down the children can be quite young. So the court orders says, “Thou shalt continue to enforce support until that child has become 18,” or 21 or is no longer living at home or whatever the circumstance is.

In the new model, we’re moving to a case management model where my staff can work and develop an enduring, constructive working relationship with the payer. That’s when you see your compliance rates begin to change. If you have the tools to support you, the technology to support you, that says to you, “By the way, Joe Blow or Mary Smith has missed her first payment,” then that enforcement officer can take action immediately, as opposed to us waiting for someone to call in three or four months later to tell us that they’re not getting the support they deserve. So our compliance rates, you’re quite right, are not where they should be.

The model in British Columbia, as you suggest, is a program that has been in place for the last 15 years and has had a structure and a technology to support the work that it does. As a result, their compliance rates reflect that. It reflects the working relationship they have with their clients.

So it’s not about sending people to jail or suspending their driver’s licence; it’s about having people fulfill their obligations to each other, and that’s what we want to do.

**Mrs Sandals:** I certainly wish you luck in the move to a switch in management models and the technology to support it. Certainly the parents out there who aren’t receiving support will thank you and our MPP constituency office staff will thank you.

**Ms van Son:** No doubt.

**The Chair:** Since we don't have a questioner, I'm going to ask a few questions, with the committee's indulgence. I've got you on there to ask questions as well; we're trying to do some kind of a rotation in some ways.

You have 400 staff now and a budget of \$30 million, and you're collecting \$560 million a year. That's about a 6% cost on what you collect. In terms of these improvements, do you have an estimate of what your percentage cost will be on any additional money you collect? In other words, will it in future cost 10% to collect whatever you collect? What is the outcome going to be with regard to these additional investments you're going to make?

**Mr Costante:** I don't think we have an exact number for you. Undoubtedly there will be some increased costs for the new system, for some additional staff, for a case management model. We're also expecting that there will be increased payments made, so that would go up appropriately as well. As well, we're hoping that there would be increased savings on the social assistance program as those things are done. We're going to be tracking the costs and benefits of this very closely, and I think our Management Board colleagues are also tracking it very closely.

**The Chair:** Can you provide to the committee—and you can do this in writing after today's meeting, if that's more convenient—what the outcomes are that you're going to measure so that a committee sitting in this place five years hence will find out whether the investment you made was worthwhile or not worthwhile in terms of the collection, the amount of money you're saving the social assistance system, those kinds of things?

As well, my concern with regard to the numbers we use in this whole area of the Family Responsibility Office relates to information you don't presently receive, and that is where there has been an accommodation between two estranged spouses as to what is going to be paid or how it's going to be paid or whether there was a gift or a cash payment or whatever it is in lieu of payment and that is not recorded within your system as it is presently put forward. Are we going to be able to track how much of the \$1.3 billion that hasn't been paid has been accommodated or agreed upon between the two spouses that it never be paid because the two spouses realize that it's an impossible task or that circumstances have changed and they haven't returned to court and that kind of thing? Is that going to be included in your particular system, that somehow you're going to be able to track that?

**Mr Costante:** On your first question, about getting back to the committee, I will make that undertaking. If I could beg the committee's indulgence, I'd like to do that after we have got the results of the RFP so I'll have a better sense of what the costs are, and then we can get you what the outcome measures are that the committee may want to review in the future to see whether we've achieved what we said we were going to achieve.

**The Chair:** Just in that light, your RFP is not defining the outcomes you want?

**Ms King:** Not in the draft. We'll certainly have it as part of the final RFP. The dollars will be defined as part of the final RFP which will go out subsequent to the pre-release.

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**The Chair:** But I think the ideal time for us, as politicians in the Legislative Assembly, to try to deal with these is when you're creating a new system, for us to say to the bureaucracy, "We want such and such measured." You may say you want other factors measured, but we as politicians may want some very basic data tracked over a long period of time. Now, I don't know when that's best to do. Is it best to do after the RFP or should it be included in the RFP that was yesterday—

**Mr Costante:** Yesterday was just a pre-release of the more technical requirements of the system. We will have that information in the final RFP. Before that RFP goes out, of course, there will be extensive discussions about what those outcomes are, what those costs are, what those expected benefits are with the minister and Management Board and cabinet, I suspect, before they get embedded in the final RFP that goes out. That's why I had asked that I provide that information to the committee post that process.

**The Chair:** OK. I think it's really, really important, because I would like to know such factors as, what are the incomes of the people we're dealing with? Prior to 1988, this was a private citizen's responsibility. I'm all for the fact that the province is acting on behalf of people who cannot afford or don't have the expertise to go after their spouse with regard to payments, but I do find it a little disconcerting that the taxpayer in general is paying for a dispute between two people who are well-heeled enough to deal with that matter outside of provincial responsibility. We're spending \$30 million of taxpayers' money to do what is essentially a civil matter between two people. Notwithstanding, I know there are people who need help to carry out this function, and that was what we were trying to aim at in 1988. I would like to see us recoup some of the cost from people who can afford to pay for those costs.

The other question is, what kind of revenue does FRO generate in a year?

**Ms van Son:** We have revenues through administrative fees. We charge a number of administrative fees. For example, if people ask for a director's statement of arrears, there's a fee attached to that. I'm just going to check my numbers to make sure I give you the right number in terms of what we've collected.

**The Chair:** Perhaps once you find that out—not to stall the committee while you're looking.

**Ms van Son:** Actually, I have it here. The thing with administrative fees is that we charge the fees but we collect them after support has been paid, because we never want to take monies away from families. To date, since April 1, 2000, we have collected \$2.2 million in funds returned to the general revenue funds of government. We've charged \$9.7 million. So in time, once people pay their support—it's a slow process—we will gain those monies as well.

**The Chair:** But on an annual basis, the auditor shows me a figure of \$750,000. So on an annual basis, it's three quarters of a million dollars approximately that you're collecting of the \$30 million you're spending.

**Ms van Son:** Is the \$750,000 the admin fees?

**Mr McCarter:** Yes, we have that at year-end as of March 31, 2003, total admin fees collected by the office were \$744,000. That looks about right, if you collected \$2.2 million over the three years.

**Ms van Son:** Yes, that is about right. That's correct.

**The Chair:** I have a little bit of a problem with your concern and the auditor's concern, quite frankly—I would like to debate this particular item. That is, you find some problem with a reactive system in that by saying that, you are then saying it is the state's responsibility to deal with these two people, to intervene in their matters, even when perhaps they don't want you to intervene. I just don't understand why a reactive system isn't adequate if somebody's not receiving a payment. If we have a system, I believe the citizen should be able to call the system and say, "I want action, and I want action within a reasonable period of time." But if the citizen doesn't want to call or both spouses are satisfied with what is going on, I don't understand why the Family Responsibility Office would want to intervene.

**Ms van Son:** I think it's important to understand—I understand your point as well; many people have shared that with us—that 51% of people who divorce or separate are able to come to agreement on their own. They don't come to the courts. They don't come to us. That's 51% of the folks out there. The other 49%—for reasons that they could be very bitter, they could be so angry with each other they never want to talk with each other—go to court and ask the court to make those determinations around child support, spousal support, custody and access, a whole range of issues. They are—you're right—mandatorily registered with our program, but they always have the option to opt out of the program should they decide to do that. So they can mutually agree to opt out of the program.

I have to say, though, that anecdotally, our experience has been that of the people who opt out, two thirds come back into the program, because they're not happy campers. These are not people who want to talk with each other. They don't want to deal with each other. Some people like our program a lot simply because we are the facilitator. We're that third party, and they work through us. I understand that other people would have other opinions on that.

**The Chair:** My opinion is that each one of us can rely on the government to do certain things for us, and we have to provide services for those who are most in need in terms of what you're doing, but I don't believe government should be proactively intervening in people's lives. That's what you're proposing here, and that's what I disagree with.

I have Mr Kormos next.

**Mr Kormos:** In June 2001, then-Minister Baird said that the government had allocated \$525,000 to study the office's computer needs. Was that money spent?

**Ms van Son:** Yes, the \$525,000 was specifically used to undertake a feasibility study.

**Mr Kormos:** Of?

**Ms van Son:** The feasibility study was that, as part of our research, we were looking at enforcement models that existed in Canada. British Columbia is considered to be a leader in enforcement in Canada. So we threw an RFP—did we do an RFP?

**Ms King:** No, single sourcing.

**Ms van Son:** No, we did a single sourcing; sorry. We asked British Columbia to undertake a feasibility study to determine whether there was a solution—a software solution, a technology solution, a case business model solution—out there that could fit our business needs. That's what the \$525,000 was for.

**Mr Kormos:** Who was that paid to?

**Ms van Son:** That was paid to Themis. It's a company out in British Columbia that undertook that study.

**Mr Kormos:** For \$525,000, they conducted a study and they prepared a report?

**Ms van Son:** Yes, they did.

**Mr Kormos:** Where's that report?

**Ms van Son:** We have the report.

**Mr Kormos:** You have it. OK. What's it called?

**Ms van Son:** What's it called?

**Mr Kormos:** Yes. For reference purposes. For FOI purposes. How would one describe it?

**Ms van Son:** I don't know the long name. I just know it is a feasibility study. I'm sorry. I could get back to you on that. I understand that.

**Mr Kormos:** We don't have to go through FOI, do we, Ms Broten, for a copy of that report? I was here Monday. Can we have a copy of that report? That's \$525,000, half a million bucks and change.

**The Chair:** Ms Broten is not representing the ministry. It's the ministry's document. I presume they will respond to you.

**Mr Kormos:** I just wanted to draw her into it.

**The Chair:** Do you want to respond?

**Mr Costante:** Sorry, Mr Kormos. I think we'll have to get back to you on whether we can provide it. There are perhaps FOI issues with the report. So we'll have to study that.

**Mr Kormos:** Fair enough.

**Mr Costante:** We'll get back to you fairly quickly on whether we can or not.

**Mr Kormos:** So you obtained and paid for the report. Is that report being relied upon in your current process?

**Ms van Son:** It's certainly one of the elements that we are using, because there was a series of reports that came out of that study around our business requirements, our current business processes. They looked at our current business processes and said, "If you want to move to a case management model, this is the gap. These are the things that you don't have in place now and that you will need to do in order to move to that process."

So there was that whole analysis of what we have now, where we need to go in the future and then what we

would have to modify or build to make us get to where we need to go.

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**Mr Kormos:** A recurrent observation by Ombudsmen and auditors is the inadequacy of the computer system. That's a given. The concern that I share with Ms Martel is the minister's indication that it's going to take almost two years to get a new computer system up and running, and also the ballpark, the \$10-million-to-\$40-million ballpark.

I suppose my concern is that in two years—it seems to me the technology changes so rapidly that it's always one step ahead of you, but also it seems to me that computer technology has been expressed to be of concern so frequently. You spent \$525,000 addressing it, announced by Baird. It's worrisome that there's nothing more concrete in terms of what you need. Now you're doing an RFP basically for people to tell you what you need when it seems to me you should know what you need.

**Ms van Son:** I don't want to mislead you. We have done an enormous amount of work in terms of what our business requirements are. We've done business process mapping. We have done an extensive amount of work, using our staff, who are our best resources, to tell us what we need in order to do our business better. So we're not just relying on one document. We're relying on the experience of other jurisdictions across Canada. Quebec came a few weeks ago to meet with us, to talk to us about our system. So there's a lot that goes into it. Frankly, it's not just about technology, it's about changing our organization.

**Mr Kormos:** What are the timeframes here? You've got this first RFP out, this preliminary one, and you said how many days?

**Ms King:** The draft RFP is four weeks.

**Mr Kormos:** Four weeks, one month, and then we're talking about an RFP. What's the timeframe for that?

**Ms King:** It's 12 weeks.

**Mr Kormos:** It's 12 weeks, so three months.

**Ms King:** It's going to be posted on MERX for 12 weeks. So it goes out for 12 weeks.

**Mr Kormos:** Then presuming that it's responded to, what's the amount of time you expect to use to assess the submissions?

**Ms King:** Approximately 10 weeks.

**Mr Kormos:** That's 10 weeks, so two and a half months. Then presumably you'll be entering into an agreement. You're saying you expect the work to be done over a period of one and a half to one year and nine months? I'm wondering where the minister gets the two-year timeframe.

**Ms van Son:** The overall project, we anticipate, will take anywhere from 18 months to 23 to 24 months. These aren't projects that have always worked fluidly, and you know that. So we're being cautious. We want to do this right. There are training requirements, there is a huge move of data that has to come off the old system, that has to be converted into the new system. That's millions and millions of fields and data bytes and all of those things

that I don't all understand. It is a large undertaking, and we want to do it right.

**Mr Kormos:** OK, fair enough. In view of the auditor's observations over the course of so many auditors' reports, is the auditor going to be involved at, as it has been put, the front end so that they don't have to do cleanup after the fact? I'm dead serious.

**Ms van Son:** As the deputy has indicated, we do have a fairness commissioner who will be involved throughout the procurement process. Our internal audit folks no doubt will be involved. We want to do this right.

**Mr Kormos:** Who is the fairness commissioner?

**Ms King:** The name of the company is Partnering and Procurement Inc, and the person I'm working with is Ron Edgar.

**Mr Kormos:** Ron Edgar and Partnering and Procurement Inc. I don't travel in those circles, you understand.

**Ms King:** They're based on a vendor-of-record list. So they've been identified as being able to perform this type of work in terms of procurement work. They've been around and they've done a number of very large IT projects such as this. So they have a lot of extensive expertise.

**Mr Kormos:** So what is the fairness commissioner?

**Ms King:** His role is to ensure exactly that, that the process is fair, that it's open, that it's transparent. He will monitor the the entire process from the time we release the RFP. In terms of the evaluation process, he will actually facilitate any of those pieces.

We are intending to have a data room. He will ensure that the information that will be put into the data room is the same information that everyone has.

**Mr Kormos:** And it's Partnering and Procurement Inc that's going to fill the position of fairness commissioner?

**Ms King:** He has already been retained.

**Mr Kormos:** What's that costing? Is that a percentage of the overall contract?

**Ms King:** Because of the nature of the work, it's going to be \$50,000 for the duration of the procurement piece only.

**Mr Kormos:** Fifty?

**Ms King:** Five-zero thousand.

**Mr Kormos:** So that's a flat rate? Nothing more is going to be charged by him?

**Ms King:** Nothing more is going to be charged to that.

**Mr Kormos:** Why aren't we using the auditor's office to do that?

**Ms King:** We're not. We're using—why are we not using the auditor's office? I'm sorry.

**Mr Kormos:** Yes.

**The Chair:** Mr Kormos, I'd like to have one other questioner before we rise at 12 o'clock.

**Mr Kormos:** In view of the grief that was caused by Andersen/Accenture—you were here. Ms Martel was one of the combatants. There was grief. This is part of the problem. You've got Partnering and Procurement Inc being paid 50 grand replicating a role that would have been played by similar private sector people in Accenture, and then the auditor has got to come in and clean up

the mess after the fact—or at least try to—with his push broom. Why isn't the auditor being involved at the onset if you're going to want to—

**The Chair:** Perhaps I could ask the auditor just to respond.

**Mr McCarter:** We wouldn't normally get involved in the development of IT projects. One reason would be that we wouldn't have much time to do audits given the number of development projects across the government. Second, it's difficult to go in, to be honest, and audit and comment on a project that you were involved in in the front end. I thought the comment that an internal audit should be involved, though, was a good one.

**The Chair:** Ms Broten?

**Ms Laurel C. Broten (Etobicoke-Lakeshore):** Mr McNeely will have a series of questions that will take longer.

**Mr Phil McNeely (Ottawa-Orléans):** We went through much the same process in the city of Ottawa when the 12 municipalities came in. I was on the committee that looked at the proposals. The 18 to 24 months seems reasonable. We had 12,000 employees. We had all our roads and sewers and the management programs for those and all the staff salaries etc. It was \$35 million.

I think we can look at that \$525,000 as an expenditure that's out there, or the \$50,000. You're probably doing scoping through the preliminary RFP. One of the things I would suggest to you is to make sure that your consultant and staff—I don't know who they report to, but we had them report on a quarterly basis. There was a motion that I made at committee and council accepted that we get this report on a quarterly basis because IT programs have the tendency to get out of control. Look at the schedule, look at budget and look at meeting the objectives. This went very well. What you're telling me is that the dollars we might be quarrelling over now are the important dollars, because if it's not scoped properly, you're going to get into difficulties down the road. You're not going to deliver.

I think your timing is correct. If it's \$35 million to \$40 million, it's amazing the amount of work that gets piled into three or four months at the centre of that project. It's just amazing what happens there. I think it's obviously the way to go.

Are there any other studies that have been done to define this? You've mentioned the \$525,000. Are there other studies that were already paid for and done?

**Ms van Son:** No. Our starting point was the feasibility study, and that was the formal study that we did. Throughout this whole process, as I said, we've been working with staff, we've been doing intensive business process mapping so that we're clear on what our business requirements are.

In terms of reporting out, we have, as part of our plan, that we will be reporting regularly to our deputy, to the minister and probably to Management Board. We, more than anyone, want this to be a successful process. We want it to be cost-effective and we want it to work well for our clients.

**Mr McNeely:** I know that we're dealing with the responsibility, here, to children in the province. That has to be the paramount issue, but have you looked at cost-benefit to see when the payback is? It seems to me that, hearing from you so often, "modern technology," right through your presentation, I agree with you completely. I think the auditor said that and staff have agreed. What is the payback on this, if it's \$35 million or \$40 million? Is it three or four years? It seems to me it should be.

**Ms van Son:** Yes, we actually see this as being a very strong project for a strong return on investment. We know that we can achieve some significant savings by moving to new technology. Our current technology is quite costly. It's written in COBOL so, therefore, it's pretty expensive. We expect to see a return on investment in about 2006-07, one full year after implementation.

**Mr McNeely:** The \$210 million that it costs the province, the taxpayers, for social assistance—what reduction do you see in that? Is that \$210 million over 12 or 15 years?

**Ms van Son:** The \$210 million that is owed to government is a cumulative cost so, yes, you're right about that. Experience has indicated—and what we're estimating is—that we can see a 20% increase in recoveries to government. Last year we collected about \$34 million back to government. We know that we can probably increase that by \$6 million to \$8 million every year. We used to have teams that were just specifically focused on recoveries to government and social assistance dollars returned, but because we are kind of stretched to the limit we've had to move away from that. So we know we're not collecting as much as we could or should be; we're hoping in the model that we will.

**Mr McNeely:** This should have been put in place in the late 90s. Have you estimated the dollars we've lost, the government has lost, the taxpayers have lost as a result of not taking action, not providing the proper technology for our workers?

**Ms van Son:** I think the most remarkable number is the \$1.3 billion that is owed to families across the province. The \$211 million that is owed to government certainly, as I mentioned, is a cumulative cost. Our ability to do a lot of analysis in our current system is something else that we're hoping to—we will—fix in the new model because we are quite limited in what we can do now.

**Mr McNeely:** Thank you.

**The Chair:** We'll reconvene at 1 o'clock.

*The committee recessed from 1203 to 1305.*

**The Chair:** I have Ms Broten, Mr Zimmer, Mr Delaney and Ms Martel on my list. We'll start with Ms Broten.

**Ms Broten:** For a lot of us as we prepared to come today and just from our own knowledge of FRO, the best description I can say is that over the last decade that I've watched what has happened in family responsibility as it's gone—it's really quite a disastrous system for everyone involved. I was a family law lawyer. I've collected debts on behalf of large financial institutions,

and whichever way you look, the system really didn't work for people and hasn't worked for people. I know we're preaching to the converted when we talk about the problems in the system.

You've shared with us today some of the improvements that are going to come forward. One of the things I think is that as we sit in this building, we get dissociated sometimes from the people. We've said we've got to think about the kids and talk about the real people. I'm wondering if you could in some concrete ways share with us how the system will be improved, the point being that it could have been improved some time ago if the computer system you're talking about had been in place.

It's kind of a distant thing to talk about systems management, but I want to know, if you focus on what I think are the two groups, generally the good folks out there who are trying to pay and still find the system very challenging—frankly, as a family law lawyer, I advised every single client not to go through the system, to opt out and not participate in the system. So for the folks who are good folks, how is this new system going to make their life better in concrete terms? We focus on what we've described at times as the deadbeats, which is the other side of it. How is this new system, in concrete terms, going to make improvements in enforcement? How are we going to move more quickly?

I'm guessing that when you talk about a BF system, it's a tickler system—that's what we would have called it in law—that something's going to come forward to notify you, "Mr So and So has not paid and we're going to track this." We're not going to wait until someone calls us seven months later; we're going to know. You might make a decision on the first day not to do something. I don't know what your system will be. But those are things that we need to understand better so we can see this system rolling in and how it really is going to make concrete, measurable change for the people who call my office every day looking for their money, not looking for their money, on every side of the spectrum.

**Ms van Son:** That's a big question, and I'm going to try to be as concrete as I can. In terms of the work we've done in looking at other jurisdictions, fundamentally—and you'll tell me if I'm not being concrete enough. One of things that we have to do first and foremost is to build a better working relationship with our clients. When I started at FRO four years ago, the feedback I was getting was that we were not accessible, that we didn't return phone calls, we didn't follow up, and we were pretty confrontational and sometimes adversarial. One of the things we need to do is better outreach, and I'll get to the concrete stuff. I know we need to have a better informed clientele. We need to do more education, not only with our clients but with the bench and the bar. We do a lot of workshops with the bench and the bar, but that is something we need to continue to work on.

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The model itself is a team-based model. Right now, we have nine teams in FRO that comprise what we refer to as client service associates and client service clerks.

We have a call centre and the people who person those phone calls are enforcement officers and their client services clerks. Sometimes some of them are on shifts for four hours; some of them are on shifts for three and a half hours. If you're spending four hours of your day on the telephone, you're not taking enforcement action. You're dealing with issues; you're dealing with people's immediate problems in terms of, "Where's my support payment?" and so on. We want to develop teams that comprise not only enforcement officers but the appropriate client service clerks to support that. The teams will also have financial people right there on the team, and also, as they do now, they'll have access to legal resources.

We're also changing our intake area where all the mail and all the paper and documentation comes in. Some of the functions that are now kind of out there in the branch will be more streamlined, more focused into the team. The team will have all the supports it needs, not only in terms of each other but they'll have better technology; they'll have the kinds of equipment they need right with the team. I know this may sound small, but it's a big thing when you're dealing with a program of this size. They'll have their printers and fax machines right at the team so everything is accessible there.

We're moving from nine teams to 14 teams. We're changing our skill sets. We're going to be rewriting a lot of the skill sets and job descriptions that we have.

The focus will be to deal with—enforcement is all about timing, and if you miss opportunities about enforcement, then you're not doing your job. It's about relationships and it's about timing, so the system itself, the technology itself, will have the tools, the bring-forward systems, which are absolutely essential. For example, if I'm an enforcement officer, when I sit down at my desk in the morning and turn on the system, it's going to tell me that I have X number of things that I have to do today that are part of my bring-forward system. It's going to tell me that I haven't done a number of things that I need to do today, and the system won't allow me to move forward unless I do them.

So there are some security measures in there. It's also going to generate letters for me right from my desk so I don't have to walk down the hall and do those kinds of things. It's the kind of support that people need to do their job. They'll still be a small call centre where people can call in with general inquiries, change of address, just general kinds of things. They'll be that, they will still be part of that team, but the focus will be on the payer and me as an enforcement officer. They will have my direct line so they won't have to call into the call centre and speak to 45 different people every time they call in. They will speak with me—not me; the enforcement officer. The enforcement officer will have that relationship with that client from the moment that file is in our office until the moment it leaves, if it ever leaves. So we will be able to work out payment rescheduling; we'll be able to deal with that person's situation. For example, if I lose my job, the enforcement officer will be there to work with

me about what my obligations still are, how I need to go back to court to change my court order because my circumstances have changed. It's that kind of involvement, that kind of one-on-one relationship.

**Ms Broten:** OK. I understand how that system will work in terms of the benefits of technology. I don't understand what prevented the better outreach from happening over the last decade. It's not clear to me why that didn't happen.

**Ms van Son:** We have had very limited resources, so you make decisions every day about what you're going to do and what you don't do. Frankly, we also made a decision that if we went out and did more outreach, we might be creating expectations that we couldn't meet and creating business that we couldn't deal with. So we have limited our outreach.

We did a very successful project up in Thunder Bay, where we went up with a number of staff for over a week, and we would like to do more of that stuff.

We did case-specific-type work with clients. We did workshops in the evening, workshops in the afternoon. We were up there for a week, and it was very successful.

We know we need to do more. We know we need to do outreach to people whose language is not English, but we have made decisions that we would limit that activity because of resources and volume, work load.

**Ms Broten:** OK. So how are these improvements going to better affect the lives of the payees? We've talked about the payers. They're going to have somebody who actually knows their file: "You and I are going to be dealing together. You're going to know me. I'm case number whatever, or Mr Jones." But what about the payee? How are the improvements going to better her circumstance?

**Ms van Son:** The bottom line is that the recipient receives the support payments that she is due, that we don't miss enforcement opportunities, that we take action in a timely way, that she's able to pay her rent, that she's able to put food on the table, that she's able to send her children to school properly clothed. That's what we're there for—to enforce those court orders, to make sure people receive the support that they are owed. That's our goal.

**Ms Broten:** Is she going to have the same type of relationship with the person at the end of the phone?

**Ms van Son:** She will have access to the smaller call centre, but because they are all part of the same team—the 14 teams that we will be developing, we're not quite sure yet whether it will be done by region or alphabetical or whatever—people aren't working in isolation of each other as they are now. We work very much in silos. So everybody will be knowledgeable about those cases. It's a much more holistic approach to a case.

**Ms Broten:** How are the new systems going to improve in terms of going after the folks who are trying to evade and are trying not to pay? They're out there. How are these improvements going to directly improve the collection on arrears?

**Ms van Son:** One of the things this whole structure and technology will give us is a greater flexibility and a

greater ability to adapt to our business needs. So, for example, one of the things that we're anticipating is putting together a specialized team just to do trace-and-locate.

We might develop a specialized team that goes after the most egregious cases so that you are focusing your resources on those things that need priority action being taken. So we'll have that flexibility and that ability to do that.

**Ms Broten:** How do we compare right now in that trace-and-locate capacity to other jurisdictions?

**Ms van Son:** Part of trace-and-locate is a very difficult challenge. People, unfortunately, sometimes will do anything that they can do to not be found. We've had people who are employed and then they leave their jobs because we have found them. Then they actually leave the country. While that may sound dramatic, that happens every day.

So one of the projects that we actually have in place right now is that we are negotiating with our ministry partners to work with them in getting more access to more databases, because what's important is—we have limited access, as everybody knows, to the Ministry of Transportation database, and that can give you some very useful information. But we're negotiating with some other ministries that have very large databases that may be able to give us information as well in terms of where these people are located, or give us an address, or give us a SIN number, or give us some piece of information that will help us find these people.

We talked about the British Columbia model. In British Columbia, they have access to about 29 different databases of other ministries, crown corporations, WSIB, places like that.

So that's part of the solution, increasing our ability to tap into that kind of information: having a discrete unit just to deal with trace-and-locate issues, highly trained individuals who go on the Internet, who use 411, who can do all sorts of things to find these people.

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**Ms Broten:** What prevented, again, over the last decade, expanding the data bases available? That, obviously, is not really a financial issue. You can have all the databases in the world, but if you don't have the people to do what is very intensive work—having done it, I know how intensive it is to trace money. There are specialists in it and there are special skills that you need to have to be able to do it.

**Ms van Son:** That's right. We've been limited in our resources. I don't know how else to say it. We've had to make some very tough decisions about the things that we would do and things that we don't do.

**Ms Broten:** So you're hopeful now?

**Ms van Son:** I'm very hopeful.

**Ms Broten:** OK.

**The Chair:** Mr Zimmer.

**Mr David Zimmer (Willowdale):** I am glad to see that you are studying some other jurisdictions where this exercise was somewhat more successful. I take it British

Columbia is an example of a system that, from your point of view, works or at least works a lot better than ours.

**Ms van Son:** Yes, that's correct.

**Mr McNeely:** Mr Chair, could I ask the speaker to get closer to the mike. I'm having trouble hearing.

**Mr Zimmer:** Sorry. I said that I am happy to see that you've gone out to study some other jurisdictions that seem to work better than ours, particularly BC. I understand one of the elements of the BC model is that it's a opt-in model, rather than mandatory participation. Is that correct?

**Ms van Son:** Yes, that's correct.

**Mr Zimmer:** What are some of the other jurisdictions that you looked at?

**Ms van Son:** Really, we've looked at all the jurisdictions across Canada, because we work with these colleagues all the time.

**Mr Zimmer:** Overseas? Australia and so on?

**Ms van Son:** Yes, we've looked at Australia, we've looked at the UK model, and the United States.

**Mr Zimmer:** I understand, from what you said this morning, that in your view those are pretty good models.

**Ms van Son:** Yes. Some of them have their down sides, but yes.

**Mr Zimmer:** Am I correct that all of those models have opt-in participation rather than mandatory?

**Ms van Son:** No, that's not correct.

**Mr Zimmer:** Who else has a mandatory?

**Ms van Son:** Just about every program in Canada is a mandatory program. British Columbia is a voluntary opt-in. I think it's Alberta and/or Saskatchewan that have a semi-voluntary opt-in, but most programs in the United States and Canada are mandatory, or universal.

**Mr Zimmer:** But the program that you think is really well run, BC, does not have mandatory participation.

**Ms van Son:** That's correct.

**Mr Zimmer:** And Alberta?

**Ms van Son:** They have a quasi—

**Mr Zimmer:** Quasi. I understand that's a well-run one.

**Ms van Son:** It's in the midst of a major reorganization.

**Mr Zimmer:** Is it better than Ontario's?

**Ms van Son:** Those are not black-and-white answers. Their compliance rate is low for their caseload.

**Mr Zimmer:** What I'm interested in is why you feel so strongly that it ought to be mandatory, rather than opt-in, given the track record of other jurisdictions.

**Ms van Son:** I think there are pros and cons to both. The voluntary opt-in program gives people a choice. It says, "Do you wish to come into this program?" But that's all it does. Everything else is the same, but it does give you that choice. We have a mandatory program where people can agree to leave the program if they so desire. I think some of the experiences that other programs have had, which is why they've actually moved away from voluntary opt-in, are that sometimes your most vulnerable individuals are not aware of the program and therefore don't have the benefit of an enforcement

program. People who are in domestic violence situations or abuse situations or lower income, perhaps not well educated, they have that right to have the same kind of protection as anybody else. A voluntary program puts the onus on you to come into the program.

**Mr Zimmer:** Yes, I understand that, but the BC model seems to attract you in all other aspects, except the participation scheme. Putting on your objective hat, give me two or three things that are good about the opting-out model and two or three things that are good about the mandatory. I want to look at this issue.

**Ms van Son:** Please don't get me wrong. I'm not opposed to either one. This is what our program is; it's a mandatory program. They both have their benefits. I think choice, being the voluntary opt-in, can be beneficial as long as people are well educated and informed. A mandatory program is equally beneficial, because you do protect some of our most vulnerable people.

**Mr Zimmer:** I'm very interested in protecting the vulnerable people, but it seems if someone has an order and they've got to pay X dollars—and there must be a lot of cases where the money is being paid and there's no problem, so there's no need for those to be in the system. It seems to me that if your system is overwhelmed with caseload and so on, one way to eliminate a lot of the unnecessary caseload is to only take in those who really need the assistance of FRO.

Surely, if there's a parent, a husband or a wife who needs the assistance of FRO and they choose to register, then you bring down the full power of FRO on them and collect it. For those who don't want to participate in FRO, you can just eliminate all of those files and all of that unnecessary work from your systems and devote your systems to those cases where two things have happened: (1) there's a need; and (2) somebody has asked for help.

**Ms van Son:** Let me just say a couple of things about that. Our compliance rate averages about 32%, but it's not a static number. People fall in and out of compliance all the time, so that moves a fair bit. Sometimes that compliance rate is what it is because we are there, because we facilitate a process. You have to understand that these are not happy people, and a lot of them don't like to talk with each other. Through the support deduction order, for example, it's like when I take a loan out at the bank. It just comes off my paycheque. I don't have to think about it, I don't have to bother about it. It just happens. My family gets the support it needs. It's simple.

On the other side, for example, in talking to my colleague in Quebec, originally theirs was a mandatory program. They went to a voluntary opt-in, and now they're back to a mandatory program, because what happens with a voluntary opt-in is that you end up with the most complex cases. You end up with cases that are already substantially in arrears because they thought they had an agreement, the two of them, and for whatever reason it stopped and the woman or the man has been trying to get the money from the other. By the time it actually gets to the office they're significantly in arrears,

so they're much more difficult cases. Quebec's experience was that it was a disaster, and their compliance rates fell significantly.

**Mr Zimmer:** Let me put this hypothetical case to you, because it might illustrate what I'm trying to get at. If there was an order, and I had to pay money to my wife and I was inclined to be a deadbeat, I might be—

**The Chair:** Is this a true story?

**Mr Zimmer:** No, this is hypothetical; I qualified that. If it was a voluntary opt-in system—and the opt-in system, once you got into it, was very well run. So it was a lean system; it got after those people who needed to be gotten after. Suppose I, as a payer out there, knew that the reputation of FRO was that it was an efficient model, it got after deadbeats, and that was the reputation in the community. So my wife has an order against me, and she says, "We'll work out an arrangement. We're not going to opt in, but keep your payments up, David." I know that if I get behind or I start messing around on the issue she's going to drop it into FRO, and I know if it gets into FRO they're going to be all over me in a flash.

It seems to me that that would have two results: (1) It would keep my payments up because I don't want to end up in FRO; and (2) from FRO's point of view, you can get rid of a lot of unnecessary work by keeping it out of the system so that the cases you have to deal with are the really recalcitrant payers. The whole system is premised on FRO having a reputation for being efficient and effective. One way to be efficient and effective is to use your resources prudently and wisely. So if you have an opt-in mechanism rather than mandatory, you save your assets, you have a better organization, the word gets out on the street that you're not to be diddled with, and everybody is a winner: the parent who is waiting for the money, and the bureaucracy, which has less of a caseload.

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**Ms van Son:** Mr Zimmer, I'm not arguing with you. In the scenario that you've just portrayed, absolutely, everybody is a winner. But in terms of where we are as an organization right now, if we fundamentally don't fix it, we're never going to get to that part where we're a well-run organization, where we are efficient and timely and out there.

It's quite feasible for a government at some point in time, I assume, to take a look at the legislation, and not just that piece of legislation but a number of legislative amendments that they may wish to bring in. But we're not there yet. We wouldn't be able to sustain that kind of change before we do some of the more fundamental, basic, structural stuff that we must do. I'm not opposed to it, but this is who we are right now. If at some time or another the government, in its wisdom, decides to move to a different way of dealing with this—

**Mr Zimmer:** But the opt-in mechanism reduces all the busy stuff that you're doing in the office.

**Ms van Son:** I would argue with you on that, if I may, because the cases that are in full compliance, I assure

you, we spend very little time on. They are not a big workload.

**Mr Zimmer:** Then get rid of them.

**Ms van Son:** But people want to be in the program. People have the opportunity to opt out at any time. If they choose to stay in, they stay in. If you want out of the program, you can write me a letter and say, "We are withdrawing from the program." If you withdraw from the program, your case is closed. If at some time you wish to come back into the program, you can come back into the program. We're not holding you there against your will, I don't believe.

**Mr Zimmer:** Well, it's my last word on it, but it just seems odd that we're going to have a mandatory system, so you've got a file, fill out the papers and you're into our system, but if you don't want to be there, you can ask to be taken out and we'll take you out. There's a whole paperwork exchange, which is crazy. If people didn't want to be there in the first place, why could they not just opt out, rather than having to be put in and then opt out?

**Mr Costante:** Just a couple of other things, if I can get my two cents' worth in. The situation that you've described is with very knowledgeable people. Often the clients of the system aren't as knowledgeable, aren't as aware. I don't know how, outside of a mandatory system, you would deal with issues of spousal intimidation. I think the mandatory nature actually has that advantage, that of the most disadvantaged groups, the very hardest cases get in, and, as Sharon said, there's an opportunity, where things are OK, to opt out. I don't know how the voluntary system—and it sounds like Quebec had this experience—deals with those other, quite troubling cases.

**Mr Zimmer:** It seems to work in BC, as you've said.

**The Chair:** I sat in probably this same room when we were debating this issue, when this bill was brought forward to take over this responsibility, and I was in opposition at that point in time as well. The suspicion was that the government wanted to have high compliance rates. If you include the 32%, you can say that two thirds are compliant or partially compliant and only one third are not compliant. So the suspicion of the opposition at that point was that it was done purely for statistical purposes, to say that the program is a success and carry on.

But I think the odd part of that work has been the inability to probably put forward enough resources and deal with the problems, because governments are able to say that two thirds of the cases are taken care of. So in the public's eye, it's not 50% of the cases that are not being taken care of, which is really the case, and therefore the urgency doesn't seem as great. In my view, sitting in the room when it was decided in the first instance—and I put forward the same arguments that you put forward a few moments ago—it was purely politics in terms of trying to produce good statistics in the future.

**Mr Bob Delaney (Mississauga West):** Just as a quick recap, you asked an entity in British Columbia to prepare a feasibility study on whether a software solution exists that would suit Ontario's needs. That's an accurate

encapsulation. Could you give us the name of the entity that prepared that report?

**Ms van Son:** The company is called Themis Inc.

**Mr Delaney:** I think you did actually give us that. Did they find that there was an existing solution whose capabilities can be adapted to suit Ontario's needs?

**Ms van Son:** When we did the feasibility study we were very open about this. The study we were doing was against BC's model. We were looking at BC's model, both structurally and through their technology, as to whether or not that type of solution, that type of model, could fit our business needs.

**Mr Delaney:** Did it?

**Ms van Son:** They said it met 80% of our requirements and would require 20% modification.

**Mr Delaney:** You've talked about the fact that we have reciprocity in Canada and, I believe you said, throughout 85 other jurisdictions. I'm making the assumption that most of those other jurisdictions are in the United States. Describe to me what type of automated solutions are in use in what you consider to be the most effective of those jurisdictions.

**Ms van Son:** A year and a half ago we signed a federal agreement with the United States which gives us reciprocity agreements with every state and protectorate, obviously in the US. Every enforcement program has a variation of a case management model. Many of us used to be on mainframe systems, and they're all moving to different types of solutions. I would say to you that, from a business perspective—Australia, for example, is considered quite a leader in this area of enforcement. We've had discussions with them. They have sent us a lot of material in terms of their structure and how they do their business. They've also sent us some information on their technology.

They're all different. Frankly, any of them are better than ours right now. Alberta has an interesting model. They're in the midst of changing their technology as well. They've been working on a project now for the last five years. They made a decision to build from scratch. Certainly BC's model is something worthy of our looking at and learning from. Nova Scotia has a very good model as well.

**Mr Delaney:** In looking at your 23-month timeline, it seems to me that you face three options. Option A would be to write a new proprietary system from scratch; option B would be to license and adapt software in use by other jurisdictions, such as British Columbia or Australia, which provide services similar to what happens at FRO; and option C would be to license and adapt an enterprise resource planning package to do FRO functions. Which of these three are you leaning toward?

**Ms van Son:** Just as a point of clarification, when we went to Management Board to get approval to proceed, part of that approval was for us to buy a software solution. So we would be buying a software solution as opposed to building from scratch or enhancing what we have or leaving what we have as is.

**Mr Delaney:** OK. Describe for me, please, the in-house IT skills and expertise within FRO, in other words

not including outside consultants, that you will use to evaluate the proposals once the RFP submission deadline is reached.

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**Ms van Son:** FRO is a little unique. As you may be aware, in most ministries they have human IT clusters. We continue to have our own IT support within FRO to help us run the day to day, to do some basic application programming and that kind of activity. In terms of the evaluation team for the RFP, though, that will be a mix of people both from our organization, from the human services IT cluster, who have experience in this area, as well as—

**Ms King:** As well, actually, to the extent of their business requirements that will need to be adapted, we will also have our business as well as our IT staff working as part of the evaluation. So we'll have the staff in the human services cluster in terms of the architectural staff and the application development staff, the staff within our business who know our business and who can evaluate the proposal effectively, staff within our IT group, and our fairness commissioner would obviously facilitate the process. There may be some opportunity, as needed, to have our legal staff involved as well, and they will probably provide an oversight function.

**Mr Delaney:** Just as a benchmark, how many IT staff do you have in total?

**Ms van Son:** I think we have about 20.

**Mr Delaney:** You mentioned a 23-month development time to implement the new software. Does this 23 months include such implementation details as data migration of the data that you currently have in electronically indexed and retrievable format, such as data that already live in a database regardless of what it is?

**Ms van Son:** Yes, that's correct.

**Mr Delaney:** Does this include migration of data that currently exist in what we believe to be many thousands of cardboard boxes in your offices in Downsview?

**Ms van Son:** I want to be really clear about this: We don't have thousands of cardboard boxes in Downsview; we have a very large filing system that has over 334,000 files.

**Mr Delaney:** Let me clarify that, then. Does this include migration of data that currently exist in what we know to be 334,000 paper files in the Downsview office?

**Ms van Son:** Yes. We worked hard at that filing system.

**Mr Delaney:** Could you describe for me, please, your plans to test the software and ensure that it meets the needs of the RFP?

**Ms King:** As part of the RFP process, there will be opportunity for the vendors to come in and demonstrate the application. So within the RFP process itself there will be, first, an initial opportunity for a demonstration to occur based on the requirements that we've included as part of the RFP process. They will be evaluated, so they will be scored against what the requirements are. Following that, once the vendor is selected, we will need to

reconfirm the requirements, and then the whole development process occurs.

**Mr Delaney:** How long during the development process do you anticipate it will take to test it once the system has been developed apparently according to specs?

**Ms King:** The system itself will not be developed for several months; however, there will be an opportunity within three months after we've selected a vendor to look at a prototype, basically to take a look at what they have completed to date, but as you know it's an application that will take at least 18 months to develop. We will also have a team of staff who will be supporting us through this, so they will actually be testing as the application is being developed. That process is also underway in terms of defining that strategy.

**Ms van Son:** We have a document imaging system that we just recently brought into fruition, and part of that process is the testing phase. Just on that product itself, we did a testing of over two months before we went into live production. We're very aware of the need to do that. That will definitely be looked at and will happen as part of our plan.

**Mr Delaney:** How will you make the choices on what capabilities to deploy in the initial phase and what features and capabilities you'll deploy in either subsequent releases or versions of the software?

**Ms van Son:** I'm sorry, I don't know that I understand your question.

**Mr Delaney:** How will you make the choice on which of all the capabilities you can dream up you will deploy in a version 1.0 and how will you make the choice on what features and functionality to set aside for the next phase or the next release of the software?

**Mr Costante:** The RFP will be quite extensive and, maybe this is overly optimistic, we would hope that 1.0 would have all of our requirements in it. If, in coming back, it makes sense to delay some things for operational reasons or if the price tag is overwhelming and we have to give up on a few things that we would like, we would have to assess that. But our going-in position is that we want everything that we've asked for. Hopefully we can get that within the budget, given that we're buying largely an off-the-shelf solution.

**Mr Delaney:** While it's not my function to design your software for you extemporaneously, you may wish to consider a list of priorities of what you absolutely need and what you may wish to have.

Who will own the intellectual property rights of the new software?

**Ms van Son:** The province of Ontario.

**Mr Delaney:** Including the source code?

**Ms van Son:** Yes, including the source code.

**Mr Delaney:** That's a definitive yes?

**Ms van Son:** Yes, it is. Those were two very difficult questions that we've spent a lot of time working on.

**Mr Delaney:** Is there any possibility of developing this software in partnership with other provinces or other jurisdictions and in so doing enhance its system capa-

bilities or ensure a better data interchange, as well as share costs?

**Ms van Son:** I guess the answer to that will be, it depends on who the vendor is and what the solution is that they are proposing and whether it would be similar in nature to some of the other jurisdictions. I want to assure you that we work very closely with other jurisdictions, particularly across Canada. Those are my colleagues; those are the people I—we support each other on this stuff. So if there are lessons learned elsewhere, we'll use them.

**Mr Delaney:** It stands to reason that, if you're working very closely, and especially if a lot of the agreements are enforced across provincial and other jurisdictional boundaries, almost certainly other jurisdictions aren't running the latest and the greatest of everything. It may make sense. Has any thought been given to doing something in co-operation with other similar jurisdictions?

**Ms van Son:** Under the federal/provincial/territorial work that we do, we are developing national strategies. One of the areas that we have a working committee on is around technology. We recognize that in order for us to work better together, it would be useful if we all had common platforms; for example, that we could transfer funds electronically. So the intent is definitely there. We do have a working committee on this. The short answer is, my hope is that we work closely with each other on these issues.

**Mr Delaney:** By version 1.0 or a subsequent version?

**Ms van Son:** We'll see, I guess. We don't work in isolation around these issues, so I guess, yes, I could say to you: 1.0 and on.

**Mr Delaney:** What is the annual opportunity cost of doing nothing and of not developing or acquiring a new system?

**Mr Costante:** I guess the opportunity cost of not developing it—sorry, maybe I'm answering it the wrong way. The cost of not developing it is the \$6 million or \$7 million that we lose each year in terms of social assistance costs that have to be made up; the opportunity cost to the families and children who won't get as much in support payments and the cost that that could have elsewhere in the system in terms of school boards, health care, other items, because their life is not as rich, perhaps, as it could be; the opportunity cost in terms of some of the expense that we're having to put in now trying to maintain a very old, cranky system that we can't make any changes to and that money being better deployed on the front line to provide service doing that. So I guess there are a number of opportunity costs or losses, depending on how you look at it.

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**Mr Delaney:** It would total up to, just as a rough estimation?

**Mr Costante:** Those that you could document for provincial—I guess it depends on what site you want to take this from—the provincial costs are \$6 million or \$7 million a year.

**Mr Delaney:** So using the high end of the bracket—that being about \$40 million—it would be reasonable to

assume that it would be roughly a seven-year payback period for the development of the projected new software as it's now envisioned?

**Mr Costante:** If you use the high end there and the low end, that would be seven or eight; it would be a lot less if you used some other—

**Mr Delaney:** Was it significantly different the last time you came in and sat before this committee?

**Mr Costante:** I wasn't here before.

**Ms van Son:** Significantly different in what way?

**Mr Delaney:** You were here several years ago. I gather, according to the Provincial Auditor's report, the requirement has been ongoing, but was the opportunity cost of doing nothing significantly different the last time you were here? Why didn't you do it then?

**Ms van Son:** We needed approval to move forward.

**Mr Delaney:** Why didn't you get it?

**Mr Costante:** I think you're asking the wrong people.

**Mr McNeely:** On a point of order, Mr Chair: I'm not sure, but a different answer was given before. Is this an opportunity to present that, or do I have to wait?

**The Chair:** If that's OK with Mr Delaney. Mr Delaney, do you want to yield the floor?

**Mr McNeely:** I'm sorry to interrupt, but the question I asked the lady before was, "When would be the payback on this system if we spent the money?" I was told that it would be 2006-07, with 2004-06 being the time to implement. So there's a one-year payback. Now we're hearing six or seven, so I just would like to know which it is.

**Ms van Son:** I perhaps misinformed you, on further reflection. Payback starts in 2006-07. So we will start to see some of those benefits coming forward in 2006-07, but we won't see full payback until—

**Ms King:** Three years after.

**Ms van Son:** Three years after that, in 2008-09.

**Mr Delaney:** I'm through with my questions.

**The Chair:** I'm interested in the BC model. When Mr Zimmer, I think, was asking a question—you asked about their particular IT. I think it was 80% OK and 20% not OK. Why would we just not adopt holus-bolus their particular system? Then you wouldn't get into software problems, which was a big problem, I can tell you, with the integrated justice project—huge problem. Once you start into fresh software that's untested and you try to run it on a big system, you're just inviting trouble. So it's much better if you can buy stuff off the shelf that has been tested, tried and true. Why wouldn't you look to modifying some of your requirements and adopting the BC system?

**Mr Costante:** I think that's a very good question. I think there are two main reasons. We do have to work within an Ontario environment. So the system that we build has to be able to connect, for example, to the Ontario Ministry of Transportation's system. So there is going to have to be some modification just because it's a different environment here than in BC. Their system was obviously built to connect with their provincial systems and their architecture.

Secondly, we have a requirement to do this through an RFP system and not through a sole-source application, which this would be.

**Mr Delaney:** On a point of order, Mr Chair: In addition to what the gentleman has just said, the other issues that any vendor of any type would face would be, first, scalability. Can the existing software scale up from British Columbia, a province of about five million, to Ontario, a province of about 13 million. Another issue would be the evolution of technology. We don't know what platform and what software the BC system runs on. It may be completely appropriate, but it may not be. The third issue, of course, would be compatibility with the specific and unique aspects of social services and the laws that govern it here in Ontario.

**The Chair:** Yes, but you know basically, we're trying to serve a clientele, and I'm sure the BC government is trying to serve a clientele. The bottom line is that you are trying to get better service and collect money for people. I don't think there's anything political about our system or our decisions or their system. I had the opportunity to listen to Scott McNally, one of the founders of Sun Microsystems, on that fateful day of October—whatever it was—the morning of the election day. The whole high-tech industry, the whole IT industry, which represents itself very well in the area that I represent, which is part of the former city of Kanata, the whole point that McNally was making was that you don't create systems where you don't have to. What you do is you alter some of your decisions, your management decisions, to fit what's already on the shelf.

What I get from the presentation here is that we are about to create a whole new system without reconsidering some of the base decisions. Maybe it should be a combination of both. You might say, "You know, we can't have our way 100%, but we can get 95% and we can have a heck of a good operating system that's tried and true."

**Mr Delaney:** This was the essence of my question regarding whether it was possible, or feasible, to develop the system envisaged by FRO in Ontario in conjunction with one or more other jurisdictions to achieve not only longer-term compatibility but also to share costs and come down to that base set of functions that serve as a platform on top of which each province can render its own individuality with code unique and specific to that province or that jurisdiction.

**The Chair:** But what I'm saying is that where large business is going, where large operations are going, what they are saying is that the back office, the accounting, the record-keeping isn't really the key to your enterprise. Therefore you alter what happens in the back office to be able to do what you're supposed to do in the front office to better degree.

**Ms Martel:** I want to focus my concerns on some of the improvements you referenced and some of your hopes for the new system. I want to give you three specific examples, Deputy. Two of these were ones you reference earlier this morning. You talked about some of

the recent improvements, and you said that letters are going out to those people who are in arrears, and if they're not paying up, that information is going to credit agencies. Except that when I look at the 2001 report by the auditor, that was already in place in 2001, when letters were sent to delinquent payers when their accounts were 30 days in arrears; they got a follow-up letter to pay; then a monthly report went on to list accounts that were 60 days overdue; then that went to a special team of client services associates to initiate some kind of enforcement. We now have the highest level of arrears ever, so I just can't see how that has been working. It's something that allegedly has been in place since 2001.

Secondly, you talked about the specialized group for enforcement. There was certainly a special team of client services associates who were supposed to act as a special team for enforcement, at least in 2001. That didn't appear to be working very well. You also referenced the fact that cases over \$50,000 owing are sent to individual client services associates until they are resolved. But as the auditor pointed out, in November 2002 you had 1,500 such cases that still had not been assigned to a client services associate and about \$127 million owing.

Thirdly—this had to do with concerns raised in a discussion around the bring-forward capacity and how there was going to be a lot of improvement with the new system about bring-forward notes. But if I look at the most recent auditor's reports, you have that capacity in the system now, and the auditor discovered that most caseworkers were not following up on a timely basis. I just want to put this into the record:

"The number of bring-forward notes that were not followed up on within the required 30 days ranged from 46 to more than 800 per caseworker, and averaged more than 300. In addition, many of the outstanding bring-forward notes were more than a year old, indicating that required action had not been taken for a very long time."

Even if your new computer system has a similar bring-forward capacity, or one where action is blocked and you have to do the bring-forward action before you can continue to do other work, just the sheer volume of bring-forward notes is not going to allow someone to do their job.

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I listened carefully to what you suggested were improvements and many of these were already in place and were not working. I'm very suspicious about the bring-forward notes, given that was already in the current system, and I really do wonder where the concrete improvements are or where they will be. Maybe the only thing that's going to make a difference here is new staff, which I haven't heard any reference about except to, I think, a small reference you made, Deputy, in response to a question, but it certainly wasn't in the minister's announcement Friday. When is all this change going to take place? We're not in any better position than we were, despite many of these things already being in place.

**Ms van Son:** Ms Martel, I'm not sure that I understand the first part of your question. Were you talking about collection agencies or credit bureaus?

**Ms Martel:** No, the deputy said this morning that—and this was under his comments in recent announcements. He listed as point number 3 letters to those in debt—it might have been arrears—pay up or the report is going to a collection agency.

You already had those letters going out from as far back as 2001 encouraging people to pay. You also had a specific team that was supposed to deal with that. But we're still no better off in terms of what's been happening.

**Ms van Son:** We do have the collection agency program, as you're aware, and we have sent over the last year about 22,000 cases to the collection agencies. One of the biggest things that collection agencies do is they have a very sophisticated trace-and-locate capability. So their ability to find people is superior to ours. It doesn't necessarily mean, though, that when you find someone they actually have the ability to pay. But those cases would otherwise not be dealt with as they perhaps should be. Going out to the collection agencies, I think I have the stats in terms of what we've been able to collect through that.

**Ms Martel:** It was listed in the auditor's report.

**Ms van Son:** Right.

**Ms Martel:** It's about \$2 million that came back to the FRO and \$400,000 that went as fees to the collection agencies.

**Ms van Son:** Right. So those are funds that would not have been received at all.

In terms of some of the new initiatives that we've talked about, and I want to get back to the specialized teams and the bring-forward notes, one of the things that the minister did announce last week was around credit bureaus. In the past, we reported people to credit bureaus without any notification, so this may be where some of the misunderstanding is. Now we are dealing with that differently in terms of greater fairness and accountability. We're giving people notice and saying, "If you don't fulfill your obligations we will report you to the credit bureau and you have 15 days in which to respond to us." So we are giving them notice and we think that's a much fairer and better process.

In terms of the bring-forward notes, I think what the Provincial Auditor was referring to in the audit report was case log notes. You're right, people do have the ability to write notes on their cases and they are supposed to be reviewing their case log notes on a regular basis in order to take the appropriate action. But is it a system that actually brings it forward to their attention and says that they need to take action on this? No, it is not. It is not a true bring-forward system. It still relies on the staff person to go into the system, look at their case log notes and take the appropriate action.

In the new system our hope is, because we'll have more teams, more specialization and better tools, that in the morning when you come in, the system will actually say to you, "You have to do these things, take these actions today," as opposed to now, where it's dependent on the staff person having the time to go into the system,

pull those case log notes off the system and go through them and manage that work. So it's slightly different in that respect.

**Ms Martel:** But it still is contingent on the staff person having enough time to do either one, right?

**Ms van Son:** Indeed.

**Ms Martel:** So here's my second concern. I've looked at the minister's announcement. I saw nothing about new staff. You can have a new computer system and you can have specialized teams, which as I read it right now just means the existing staff being re-assigned into teams, and you can have another new enforcement tool. Ms Papatello is talking about credit cards. You've got 10 enforcement tools at your disposal and the problem is they are not being used now—I think the auditor made that very clear—seven months before enforcement is taken and usually only because someone calls.

In my opinion, unless and until you have some new staff, even with new technology, you're going to have an ongoing problem. Even if you move to a case management system, which we have long advocated and which I believe was in place before 1996, unless you have some new bodies in this operation, you are not going to be able to keep up. Have you been given some commitment by the government that you are going to get money for staff? How much? How many new bodies and when?

**Mr Costante:** There were 26 bodies added or about to be added.

*Interjection.*

**Mr Costante:** They're there.

**Ms Martel:** Are they new or are they reallocated?

**Mr Costante:** They're new.

**Ms Martel:** Full-time?

**Mr Costante:** Yes, full-time. We will have to do an assessment, once we get the response to the RFP, about staff resources required to effectively handle the caseload in the future. We'll have to take that through the budget process. Do we have future approvals? No. We are starting the budget process. We just got additional staff. We will go from there and see how many are needed in the future.

**Ms Martel:** Let me focus on the new staff, because if I heard you correctly it was to work in the call centre to divert administrative matters away from enforcement matters. That is essentially the job responsibility of the 26 new staff?

**Ms van Son:** No, they're broken into three groupings. We have a new customer service unit and there are 15 staff in there who are dealing with the more general types of inquiries. We have 16 staff in the customer service unit. We have five staff who are focused just on the trace-and-locate on the returned mail. We also have an initiative where we're contacting people when the court order is registered with our office. We have five of those folks as well.

**Ms Martel:** So none of these people are in enforcement at this point?

**Ms van Son:** No, they're not.

**Ms Martel:** And none of them will be in enforcement over the next two years as you try to ramp up to the new system?

**Ms van Son:** These are new initiatives and we're going to be evaluating and monitoring the process and whether there need to be changes or whether we need to do things differently. At this point it's not foreseen, but I don't know that for sure.

**Ms Martel:** The auditor said that since 1994 you've got probably 40 fewer staff doing casework or acting in a caseworker capacity, which I assume includes most responsibilities around enforcement. Is that true?

**Ms van Son:** That would be correct.

**Ms Martel:** Yet your caseload has grown to about 40,000 more since 1994. Over the next two years, clearly you're going to have an increase again, and at this point not a clear sense, at least from what I can get, that you'll be able to recover even the 40 staff, much less any new staff that you might need to deal with that increased caseload.

Over the next two years, without any increase in funding, how are we going to deal with all the concerns that just keep coming? I've got to tell you that even with the new initiatives you've described to me, I cannot see how you are going to be able to cope and get enforcement to a point where it's not taking seven months for something to be done.

**Mr Costante:** I think the government has agreed and taken action. That was approved in December. As I said earlier, we are about to go into the budget process again and have started. The minister has asked to see options as to how we are going to manage this program in the next two years. We will be bringing her a variety of options. It's too early to tell you what the outcomes of those are. I assume the decisions will rest on that budgetary context, and it might be a couple of months before we know exactly further measures such as what you're talking about in terms of staff.

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**Ms Martel:** Can I ask, Deputy, without knowing the outcome, and I appreciate that, is one of the options that you will go forward with for the budget process an option to increase caseworker staff?

**Mr Costante:** We haven't fully done the options yet or presented them to the minister. My suspicion is yes.

**Ms Martel:** Moving from that, going to the call centre, you had said that under the new model there certainly would be a smaller call centre. This goes back to some of the improvements I think you've already made. If I remember correctly, you're saying about 1,600 calls are being diverted now based on the new staff who are working in the call centre. Did I get that number correct?

**Ms van Son:** We're moving toward that number of 1,600 calls that are being diverted from the call centre into this new customer service unit.

**Ms Martel:** All right. I have a number of 17,000 calls daily. Is that correct?

**Ms van Son:** The 17,000 calls daily are on the automated voice line. In the call centre, we receive 1,900 calls a day.

**Ms Martel:** And people on the automated line are looking for a call back?

**Ms van Son:** No—

**Ms Martel:** They're just checking their statements?

**Ms van Son:** —they're getting status on their case.

**Ms Martel:** So 1,900 calls direct from people who are looking for information, wanting to talk to someone, either to provide address change, court action etc.

**Ms van Son:** Yes, that's correct.

**Ms Martel:** Do you have any sense of that diversion of 1,600, how long you foresee that will take before you actually get there?

**Ms van Son:** The numbers are showing that we'll probably get there fairly quickly.

**Ms Martel:** Is that within the same office hours, or are you also contemplating a change in office hours?

**Ms van Son:** That's within the same office hours.

**Ms Martel:** Can you tell me, right now among the staff that you have, how many would be off on either sick or stress leave?

**Ms van Son:** I don't have that number at hand.

**Ms Martel:** Could you make that available to the committee? Part of my concern also, and I think the auditor has mentioned this before in a previous report, is that although the staffing complement appears to be about 400, give or take, at any given time any number of people are off on sick or stress leave legitimately. But that makes it much more difficult for the office to operate as well, so if you have some recent numbers with respect to sick leave and stress leave, that would be really helpful.

**Ms van Son:** We'll certainly provide that.

**Ms Martel:** Within the context of the criticism that the auditor raised about enforcement, if we have a two-year time lag before we have a new system up and running, I'm assuming it's also a two-year time lag before you have the new case management model up and running. Am I correct in that assumption?

**Ms van Son:** Yes, you're mostly correct in that assumption. At this point, we've already moved to a discrete unit that just deals with cases moving in and out of our province. We've been able to move toward that, and we will attempt to deal with our caseload as we do every day throughout the transition.

**Ms Martel:** To get at the issue of enforcement, there are a number of new tools. I don't really know what the credit card information is going to get you if there isn't someone who can actually deal with that. Tell me again how you foresee operating in the next two years, trying to deal with very specific concerns around enforcement or a lack of enforcement, unless a recipient or advocate is calling.

**Ms van Son:** I guess we're going to do what we do every day, which is try to manage our portfolio to the degree that we can. We have taken measures. We have hired a call centre coordinator. We are monitoring for

performance better than we have in the past in terms of our staff. We're doing more training of our staff so that the responses they provide and the enforcement actions they take are more consistent. We do have specialized teams when we need them, and we are continuing to work with the collection agencies around enforcement. We did collect \$561 million last year and we hope to continue that process to the best of our ability.

**Ms Martel:** I appreciate how much you've collected. It's the flip side—and you will be worried about it as well. I'm not saying that you're not committed to your job and that the staff aren't; I know they are. I'm just thinking that if you continue to work under a circumstance where you have no additional staff, nothing's going to change in the next two years either. I'm quite worried about that.

You talked about specific teams doing specific actions. I think you referenced in and out of province, which I'm not clear I understood. I don't think that has anything to do with reciprocal agreements, does it? It's just payers who are moving back into Ontario and their cases are coming with them now?

**Ms van Son:** No, that is reciprocal agreements. We have almost 13,000 cases that we have to enforce that either come into the province or are people moving out of the province to other parts of either Canada or around the world.

**Ms Martel:** And is there a high level of arrears owing on those cases, or is it essentially contacting the new employer in the province and doing the deduction?

**Ms van Son:** It's a fairly complex process, because you're dealing with other—for example, if the payer is living in Nova Scotia, we have to send the file to Nova Scotia and they enforce it for us. It's not a matter of just finding the employer; it's actually taking that enforcement action on our behalf in Nova Scotia, for example, as long as the recipient is living here.

**Ms Martel:** But the Nova Scotia government would be doing the enforcement in that case.

**Ms van Son:** Indeed, yes, and vice versa.

**Ms Martel:** And as to the ones that you have coming to Ontario—maybe you can't answer this question—do you have a sense of whether three quarters of those cases, half, are in arrears and require that specific team to undertake enforcement?

**Ms van Son:** I actually don't know the number, but I think I can get it for you.

**Ms Martel:** Let me clarify about the specialized team. The deputy said this morning—maybe he didn't say this morning. Sorry. Maybe it has to do with the changes, what the minister announced, that a specialized team of Family Responsibility Office workers will be dedicated solely to tracking down deadbeat parents. Is this something that's going to be over and above the current structure in which a case in arrears by over \$50,000 goes to a client service associate? Is this the same thing or is it something different?

**Ms van Son:** This is our new trace-and-locate unit.

**Ms Martel:** If I heard you correctly about trace and locate, the first thing they're going to do is deal with all the mail that's coming in every day?

**Ms van Son:** Yes, that's correct.

**Ms Martel:** So that's one bit of enforcement. You'll have a lot of cases in which you have that information already but that require a driver's licence suspension, passport etc. So who's dealing with the other enforcement activities where you already have information but just need to take action?

**Ms van Son:** Our enforcement officers. That's their job.

**Ms Martel:** So the same group. Tell me how many are in that trace-and-locate unit right now. Is it five?

**Ms van Son:** In the new unit, yes. It's five people.

**Ms Martel:** And they're essentially focused on the mail?

**Ms van Son:** Yes. For example, just as a sample, of 346 pieces of returned mail, we were able to update 192 with new addresses. So those were cases that we didn't even know had moved and we are now able to take enforcement on.

**Ms Martel:** Because you could find the payer or you could find the employer or both?

**Ms van Son:** Both.

**Ms Martel:** OK. If that unit starts to operate, how many of the files would be taken out of your bigger enforcement category? I still am assuming that a big part of your enforcement is beyond that, where you have the necessary information, but now you have to go and suspend a driver's licence, move to a default hearing etc. Do you understand what I'm getting at?

**Ms van Son:** Yes. I know what you're saying. Once they do that work, it still will be up to our enforcement officers to take action on those cases.

**Ms Martel:** My question is, though, is it going to deal with about 5% of your arrears, 3% or—?

**Ms van Son:** I don't know. It's too new to tell. I'm hoping that it will have, as the minister refers to, some modest improvement at this point in time. We hope it will have an impact.

**Ms Martel:** OK. The change you want to make with respect to credit cards: Can you tell me what kind of action that is and what that will require?

**Mr Costante:** This one we're still investigating. It is quite complicated. It does get us into areas of federal law. I don't think we've definitively taken it to ground yet as to whether we can actually do it or not. It's still under active review, but we don't have a green light to go ahead yet.

**Ms Martel:** I appreciate that, Deputy. You know what? I'm even a step ahead of you on that. What is it you're trying to get from the credit card? An address?

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**Mr Costante:** Yes. It's another source of information. It would be similar to getting other provincial databases.

**Mr Kormos:** Could you track ministerial credit cards?

**Mr Costante:** If we get the proper privacy agreement, we could.

**Ms Martel:** But this would not be something for your trace-and-locate unit, would it? This would not be something that the five people in the trace-and-locate unit would be dealing with. This would be one of your regular enforcement staff dealing with this, if it comes to pass?

**Ms van Son:** If it came to pass, it is a trace-and-locate function. We have this new unit, but our staff also have the capacity to do trace-and-locate. It's not about enforcement; it's about trying to find more information, if it came to pass.

**Ms Martel:** OK.

**The Chair:** Ms Munro.

**Mrs Julia Munro (York North):** Perhaps it's the fact that we're dealing with such a complex issue, but there's something I want to come back to that you mentioned this morning about changing your attitude, I guess, or your approach. You referred to "reactive" and that it hasn't been proactive. I look at the tools you have that the auditor lists on page 80, where they're divided between the initial what he refers to as passive enforcement and then the more aggressive enforcement steps. When you look at those steps, I wonder if you could explain to us, in your comments about changing your method of operation, would you be looking at changing significantly any one of these or adding to them? Where would they then be more in a proactive mode than a reactive? Earlier today you were asked a question about the fact that obviously nothing happens until the person doesn't pay, so from the point of view of your fundamental role, it is a reactive one. I just wondered if you could give us some information to demonstrate the change you anticipate and how it would be reflected, then, in material such as we have here.

**Ms van Son:** When we talk about being reactive, we're being—when a file comes in, when a court order arrives in our office, we should be able to manage that court order in a very timely way. Collecting arrears or support is about timing. If you're not timely in it, if you miss opportunities to garnish somebody's wages or to put a lien on somebody's property or to seize somebody's passport as they're going to travel—if you're not timely about that, if you're not doing that when you should be, you miss those opportunities and therefore the enforcement doesn't happen or you miss an opportunity to collect money. For example, if somebody's selling the house and we've been informed about it but we haven't reacted in a timely way, we miss that opportunity. We should be managing our portfolio in a way that people don't have to call in and say, "I haven't received any payments for three months." We should know that immediately, as soon as somebody has missed a payment. That's when we talk about being reactive.

In terms of the enforcement tools we have, our whole goal is to get people to fulfill their obligations, so we take, as we refer to it, initial passive enforcement and we're ready to enter into a payment schedule with the payer. We'll garnish the wages; we'll use the support deduction order to garnish wages if necessary. Those are kind of passive steps.

There are certainly other opportunities, in terms of possible legislative amendments, that would make some of our enforcement tools perhaps more aggressive. There are any number of options we can look at and certainly the minister has indicated her interest in doing that. So it's being timely and it's having the proper enforcement tools to do the job well. Being reactive is a timing thing, and our ability to respond quickly to situations. The tools we use, the possible legislation we may have, is something we will be exploring more.

**Mrs Munro:** I had a question I wanted to ask you when you were talking about using those tools. When you do the investigation of someone who has fallen into arrears, would it be fair to say that generally people have found themselves in some kind of personal difficulty and their inability to pay is not based on some kind of frivolous "I don't want to do this any more"? Those tools you have may begin to pile up against this individual, but if they can't pay, they can't pay, and it doesn't matter.

Obviously, you can move down to garnisheeing bank accounts and things like that, but I just wonder if you have—because earlier today we had quite a conversation about what are actually people in arrears or partial arrears and how that is defined. Is it fair to say that for many of the cases, the fact that you have those tools that are listed here doesn't really matter if the person can't pay?

**Ms van Son:** I think that's a fair statement. People's lives change. Obviously, people's circumstances change. They become ill or they lose their job or any number of circumstances. The way the system is set up in Ontario, the onus is on the payer to go back to court and say, "My circumstances have changed and therefore could you please lower the support payment I have to make." The role of the Family Responsibility Office is fairly narrow in the sense that our legislation says that we shall enforce those court orders. We can't change them, we can't vary them. Our system is fairly litigious, so the onus is on the payer to go back to court and inform the court of that change of circumstance.

**Mrs Munro:** My next question deals with that. When I asked you the first question about the shift, if you like—more of an attitudinal thing, I think, from what you're saying to me in terms of going from the reactive to the proactive—are you suggesting that in the software you're talking about, this individual is going to be able to know that money has gone through that account?

**Ms van Son:** Yes.

**Mrs Munro:** Would we be right in assuming that, to avoid having this meeting four or five years from now and looking at exactly the same problems, we can expect to see that the individuals who are involved in this process will be able to meet those kinds of performance measures; that it will be relatively easy to be able to say they have X number of cases; that because of the technology you can monitor, you can tell that someone has fallen behind; you're able to then track that these further steps have been taken and we should be able to look at the system not only as system-wide in terms of its improvement but also in terms of the performance

measures that are related to those individuals and the use of the software you are envisioning?

**Ms van Son:** That would be our expectation, absolutely. Is there something more I should say on that?

**Mrs Munro:** No. I think one of the things people are very interested in, of course, is recognizing—and we've had a lot of conversation around the kind of investment you are hoping to see happen. We've also had a lot of conversation about recognition of the need for this to operate in an efficient way. We certainly all agree about who the clients are and how important it is to have that money out. At the end of the day, we also need to be able to say that we also have a system whereby individuals working within the system are able to demonstrate the ease with which they are able to make the process happen.

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**Ms van Son:** That's right, absolutely.

**Mrs Sandals:** I'm interested in the chart on page 86 which talks about blocked phone calls. There seems to be quite a startling difference between blocked phone calls within the GTA, which seems to be about 37% of the calls, and blocked calls from outside the GTA. It seems to be that 90% of the calls from outside the GTA are blocked. Given that I come from outside the GTA, I'm obviously interested in this. Why is that so dramatically different?

**Ms van Son:** I'm not sure I'm going to be able to say this well. First of all, we have the capacity to open more lines but we don't have enough resources to man those lines. Our call centre has, I believe, nine or 10 active lines where calls come through. My understanding is that in the north, for example, there are issues that are beyond our control in terms of access that people have to lines available to get through to our call centre. The bottom line is, we have more calls than we have people to answer the calls. The bulk of our calls come from the GTA.

**Mrs Sandals:** Except that doesn't seem to be exactly what the data are saying. I realize the blocked callers keep calling over and over again nevertheless, in terms of total calls, you've got almost one million calls from outside the GTA and 74,000 from inside the GTA. If the issue here is 1-800 lines versus 416 or 905 lines—is that the issue? What I can't figure out is why it is this skewed. Is it simply that nobody ever thought to put in more 1-800 lines?

**Ms van Son:** I'm going to have to get back to you on that. I'm afraid I'm going to give you the wrong information and I don't want to do that.

**Mrs Sandals:** OK. It's just so remarkably different that it begs the answer. This says it was March to May 2001 when somebody was obviously tracking it. The questions would be, is it still that badly skewed and, if this is data from the spring of 2001, is it still this badly out of whack and if it is still that badly out of whack, why hasn't something been done to address it? You can see that while the number of people actually getting through to have cases may be smaller, the number of peo-

ple who are calling in and constantly frustrated is obviously huge. In terms of wasted time if you're outside the GTA, one does hear stories about people who can't get support cheques and literally take a day off work to sit at home all day remaking calls. This is a pretty serious issue if you're a mom who can't get the cheque and you're sitting there on a 1-800 line all day.

**Ms van Son:** It's true, it's a very serious issue for us. It's one of the things we're addressing as part of our new case management system in terms of getting a new telephony system in place, new software, more capacity. Again, if you're diverting calls so that people are calling me directly as opposed to having to go through a call centre, that should alleviate some of the problem.

We're also moving in terms of the personal identification number, the PIN number. Eventually people will be able to go to the Web site. In fact, we've implemented just recently the ability for people to enter online, fill out complaint forms and stuff. So we're hoping that too will move calls away from the call centre so that there will be more lines available for people.

I know it has something to do with 416 versus a 1-800 line and I'm sorry, but my mind has just gone completely blank on it.

**Mrs Sandals:** I would appreciate that because obviously for those of us who don't hang out in the GTA, this is a serious issue.

**Ms van Son:** Indeed.

**Mrs Sandals:** You said that of the 26 new people who we are just beginning to put in place, 16 are customer service. So if we leave aside the skewed behaviour here on the call blocking, if we've got 16 additional people doing customer service calls, should that in some way address the backup here, so that now, if you want to register a change of address or make some sort of lower-level inquiry, some of this will get dealt with more quickly? Is that the intention?

**Ms van Son:** Yes, that's correct. When people call in now they have a choice. So if they want to just change an address—we get a lot of information from recipients. If they want to tell us where they think their ex is now working, they can provide that information through that customer service unit much more quickly and it's much more accessible. It will alleviate and it will move away some of the calls that would normally go into the call centre.

**Mrs Sandals:** The five people you talked about on trace-and-locate, I presume that the problem at the moment is you're getting returned mail and that should theoretically trigger, "Oh my goodness, they're not where we think they are." These five people who are on trace-and-locate are going to address the issue of the returned mail?

**Ms van Son:** Yes. We get about 2,500 pieces a month of returned mail and we haven't had the resources to actually take action on those, so, in truth, they've been sitting in bins for a while. Now we have these people who are working their way through them. As I mentioned, of the 346 pieces that we just used as a sample,

they were able to update 192 returned with new addresses. We were able to find the payer and also, in most instances, an employer.

**Mrs Sandals:** OK. So that will facilitate, then—it actually gets into this issue of reactive versus proactive in some ways. At the moment, this stuff is coming back and it's just sort of sitting there until somebody screams.

**Ms van Son:** Right.

**Mrs Sandals:** Now you're going to actually look at it and start the trace on the person before mom calls and says, "What's going on here?" You're actually going to initiate trying to figure out where they went?

**Ms van Son:** Yes, that's correct.

**Mrs Sandals:** Is that part of this change in culture?

**Ms van Son:** That's right. Our hope is that in time—some of the models in other countries take a much more holistic approach. They work very closely with the families and the parents. For example, in Australia and the UK, and certainly by some of our colleagues across Canada, these programs are seen as players in reducing family poverty. They are programs that are celebrated and encouraged. They work very closely with the families about being a good parent and what it means to be a good parent. Even though you're no longer living together, you can still be a good parent. We need to be getting some of that message across. We need to be following it up, though, with the appropriate measures that we need to take to ensure that people fulfill their obligations.

All of these things we're doing, while they're not the final answer, will help. All of these will come together; they will all make a difference, and I know that. Then, when we get to the new model, that's the longer-term solution, I hope, in terms of managing our portfolio.

At the end of the day, however, if somebody doesn't want to pay child or spousal support, they don't want to pay child or spousal support. It always comes down to the people. But our goal is to work better with these people to help them understand that they have some obligations they need to fulfill. So I'm hopeful.

**1440**

One of these initiatives about just calling people when we get their court order—you have no idea what a big deal this is to people, because the court system and the justice system are very intimidating. People don't understand it. They don't feel comfortable in it. They may not have good legal advice. They're already upset. They're already unhappy. Now they're going through the courts and then they get to us. So now that we're calling them and saying, "This is who we are. Here are some of our responsibilities and these are some of your responsibilities," and we give them information, it may seem to some people to be a small thing, but for them, the feedback we've received has been quite overwhelming.

**Mrs Sandals:** I'm intrigued by this vision of all this returned mail sitting in bins. Just how many bins of returned mail do we have?

**Ms van Son:** We get 2,500 pieces approximately a month.

**Mrs Sandals:** How long has it been since anybody actually attended to opening it?

**Ms van Son:** Last summer, when we were able to bring in some students, we had them focused on that.

**Mrs Sandals:** So essentially since whenever the summer students went away again. It's been sitting there collecting ever since?

**Ms van Son:** We try to do as much as we can every day. In truth, we had a backlog in this, but we've actually been able to clear that out and we're now on top of it.

**Mrs Sandals:** It never occurred to anybody before that we should have some permanent staff actually attending to this? I'm sure this isn't a new phenomenon that this has been building up. It builds up and here are some summer students: Has this been the regular cycle?

**Ms van Son:** It's not that it's never occurred to us. It's that we have been limited in our resources.

**Mrs Sandals:** You have never got the approval to put the staff on before now. Anyway, I am quite pleased that there are some new staff there to attend to some of these things, and when you're getting the phone lines for the new call-answering people, I would really appreciate it if you'd look into how many 1-800 lines you have. OK?

**Ms van Son:** Yes, I will get you that information.

**Mrs Sandals:** Thank you.

**Ms van Son:** Thank you for your patience.

**Mr Zimmer:** Mr Chair, Mr McNeely spoke to me. We'd just like to put something on the record before I begin my comments.

**The Chair:** Sure.

**Mr McNeely:** I misinterpreted what the executive director had told us earlier about the payback time. It starts payback in year one, but it takes three years to pay off the \$30 billion. So I think the answer was 2006 if we do it now: 2006-07, 2007-08, 2008-09. In 2008-09, the \$30 million, if we're talking \$30 million, just roughly, is paid off?

*Interjection.*

**Mr McNeely:** Thank you. In addition, we would serve the families and the children much better, would we not, with that new system?

**Ms van Son:** Absolutely. That's our whole goal.

**Mr McNeely:** This was presented in 1994, and it could have been implemented easily by 1997. Is it fair to say that in today's dollars, we really cost the taxpayers \$70 million, seven times 10? It cost the taxpayers \$70 million over those seven years, and we haven't been serving the children and the families well. Is this correct? Is this generally in the right direction? It may not be \$70 million, but it's in that ball field?

**Mr Costante:** That's correct. It's in that ballpark.

**The Chair:** I would humbly disagree with some of the conclusions, but Mr Zimmer?

**Mr Zimmer:** Earlier, Ms Martel asked you if you could give some statistics on stress and people away on sick leave. I wonder if you could include in that the turnover rates in your staff. That is, how long is the average person working there and how long are they there before they leave, whether they ever come back and that sort of

thing. That's an important point, I think: stability of staff and staff turnover.

My second question is: Dealing with all the pressure that you're under on the collection side or the enforcement side, getting the money into the hands of the intended recipient, what sort of priority do you give to clearing up the inevitable errors that we hear about, the payees/payers who have fallen into the system because of some oversight or glitch or paper error? All sorts of consequences descend upon them and they can't get themselves out of the system. That's the other part of the equation. Those people who are in the system wrongly, what priority do you give to getting them out, given the other priorities that you have?

**Ms van Son:** When errors are brought to our attention—as you know, many times they are brought to our attention through our MPP offices—we pay immediate attention to those. They are given high priority.

**Mr Zimmer:** And absent a call from an MPP, what priority?

**Ms van Son:** We do the very best that we can. I'm very proud of my staff. I think they do an enormous amount of work and, against all odds, I think they accomplish a great deal. We do our very best. We try very hard to pay attention to those cases and those issues as quickly as we can. Are we perfect at it? Obviously not.

**Mr Zimmer:** But what priority vis-à-vis the obvious priority for collection? Does the cleaning up of the errors get someone who has fallen into the system mistakenly?

**Ms van Son:** For example, I have somebody who works with me who deals solely with those kinds of issues, issues that people have written to us about, or they've called me, or they've called into our call centre. We take action immediately. In terms of enforcement, that's what we do every day. Enforcement is our everyday job, but when people are at risk, I can assure you we deal with them as quickly as possible.

**Mr Zimmer:** Just a final observation, and that will be it for me for the afternoon. There's a paradox or an anomaly here, because one of the themes of your answers throughout the day, and rightly so, is that in this exercise of the FRO collecting money, it's trying to teach or educate or bring to the attention of the payer their responsibilities in meeting these obligations. Hence the name, the Family Responsibility Office. The paradox or the anomaly is that when these people who need some guidance in meeting their obligations are dealing with FRO, there's a sense that the FRO is not meeting its obligations. I just pose this question: What sort of message does that send out to your clients, whom you are asking to meet their obligations, when in their dealing with you there is a deficiency there? It's an anomaly. Do you have a comment on that?

**Ms van Son:** Well, it's very frustrating for everybody. We have a legislated obligation to enforce court orders. That's our job. It's clear that we have not been doing it as well as we could and should be, but that doesn't take away people's responsibilities to look after their children or each other. You're a parent whether you are living

together or whether you are 40,000 miles away from here. You want to be angry with each other? Be angry with each other, but don't take it out on the children. From my perspective, you have an obligation that you need to fulfill, regardless of how bad we are at what we do.

**Mr Zimmer:** But you would agree there's a conflict there between the standards you're trying to get the clients to hold themselves to in terms of meeting their obligations and their experience in dealing with the Family Responsibility Office?

**Ms van Son:** I understand that, and we are focusing on the things that we don't do well, but yesterday I received a letter from a person who told me that we changed their lives, that by doing what we did, her life is starting over again. Yes, there's a conflict there, but we do terrific work and I'm not ashamed of that. We can do it better; there's no question about that. But the people who work in our office are well-intentioned people who care about children and families. If there's a conflict in that, then so be it.

**The Chair:** I have Mr Flaherty, Mr Kormos and Ms Matthews left on the list. It's now about 12 minutes to 3. We'd like to adjourn around 3 or shortly thereafter.

1450

**Mr Jim Flaherty (Whitby-Ajax):** I should only be a few minutes, I hope. I have some familiarity with FRO, of course, from being responsible for it at one time. I regret to say that what I'm hearing is not new. It may be the human condition. It may be the folly of the Liberal government of the day getting the government of Ontario into the collection business at the expense of taxpayers, which is what this is. We're talking about a collections operations. There are, of course, lots of people in the private sector who are in the collections business across Canada and across the world.

But since we are in the business, I think we have to assess how we're doing at it. I was concerned in the auditor's report—sorry, this is the research paper from the legislative research staff—with the comment at the top of the page 14: "The only publicly disclosed performance measure is the number of accounts in full or partial compliance with their support obligations." Are there some performance measures which are not publicly disclosed?

**Ms van Son:** We did have internal performance measures. We actually had more public performance measures, but our ability to meet those targets or those measures was very difficult. So the only published performance measure is the compliance rate. Certainly our staff have performance targets that they must meet in terms of the number of enforcement actions they take, calls they answer and those kinds of things, but those are internal business ones that help us attempt to manage our volumes.

**Mr Flaherty:** Is there a measure, for example, of how long, on average, it takes on a given day for a phone call to be answered, of those 1,900 calls per day?

**Ms van Son:** No, there is not.

**Mr Flaherty:** You don't know that?

**Ms van Son:** No, I do not.

**Mr Flaherty:** The organization doesn't know how long it takes, for example, this morning, to answer a phone call at the call centre?

**Ms van Son:** I'm sorry, I misunderstood. On average, the wait time can be 23 minutes for a call to be answered. Somebody has to wait, on average, 23 to 24 minutes before their call is answered.

**Mr Flaherty:** That varies, I gather.

**Ms van Son:** We have peaks and valleys during the day. The peak periods are between 10 and 12 or 1 o'clock, and then again in the afternoon between 2 and 3. Then in the evening, it's quite low. So it varies throughout the day.

**Mr Flaherty:** And this is an average over what period of time: the past year or the past month?

**Ms van Son:** The past year.

**Mr Flaherty:** So, roughly, for the year 2003, people are waiting 23 minutes, on average?

**Ms van Son:** On average.

**Mr Flaherty:** So after the fancy computer system is put in, in the next of couple of years your goal is to have that down to what?

**Ms van Son:** I think that is something we're going to work out as part of our overall process around performance measures. Those are things we're going to be having discussions about in terms of the technical piece or the RFP, in terms of our business processes, with Management Board, with our minister, in terms of what are the appropriate performance measures and targets for this business.

**Mr Flaherty:** Let me put the question more broadly. How are you going to measure the efficacy or lack of efficacy of this new computer system and all the training that's going to go with it in the future? How are you going to compare the performance of the Family Responsibility Office in 2003 with the performance after the taxpayers of Ontario are going to spend all this money on this system and to train people? How are you going to be able to tell whether it's efficacious or not?

**Ms van Son:** Obviously, if our wait times are lower; if we're able to collect more monies for families across the province; if we're able to take more enforcement actions with more benefit in terms of support dollars, in terms of ongoing dollars or arrears; the numbers of calls that we answer on a daily basis; the numbers of complaints. We'll be reviewing all of those things. Certainly we know what we're not doing well now. We will use those as comparatives as we move into the future, and we will keep building on those year over year.

**Mr Flaherty:** So the anticipation then is that the call waiting time will go down.

**Ms van Son:** Yes.

**Mr Flaherty:** By how much?

**Ms van Son:** I don't know yet. I don't know what the model is that we're going to actually end up with at the end of the day. I don't know what our staff numbers are going to be. I don't know what our caseload is going to

be. All of those things are moving targets that will have to be taken into account.

**Mr Flaherty:** When will they be fixed?

**Ms van Son:** When will what be fixed?

**Mr Flaherty:** Those moving targets that you're talking about. Quite frankly, I'm not prepared, as an MPP on behalf of my constituents, to say, "Let's just roll ahead with spending this money on this system" without some assurance by the government, by the people operating the system, that this is going to result in some determinative improvement in the quality of the service rendered.

**Mr Costante:** I think that's similar to the question that Mr Sterling asked earlier. We will be putting into the RFP some of those performance measures, and they will be identified. Have we got them worked out now and are they available for the committee today? I'm afraid not. But many of those that we've talked about will be in the RFP.

**Mr Flaherty:** Just so I can know what to look for in the RFP, what are the performance measures that you contemplate? I don't think it's a performance measure to say number of calls received. The number of calls is going to go up. The population is increasing. The divorce rate is relatively high, as you know. So there will be lots of calls. I guess one measure is how quickly you answer them. One measure is the amount of—what is it called?—full or partial compliance. What other measures are there in the business of collections in family law?

**Ms van Son:** My colleague has just handed me some of our performance expectations in terms of our current model and the proposed model. For example, in the call centre, many people receive a busy signal. We're estimating, or talking about a performance measure, that the busy signal will drop by 40%. In terms of our compliance, right now we're at 65%. We're targeting a 70% compliance rate within the first full year after implementation. Collections is \$561 million in 2003-04. We're hoping this will increase by over \$50 million per year. Social assistance recoveries: We're looking at increases in that. Client contact: in terms of the effectiveness of providing more information to people. Case continuity: Clients phoning the call centre, as you know, now speak with a different person every time they call in, so a performance expectation under the new model is that each case will have a case owner who will be familiar with their clients and their cases. Complaints: obviously, fewer complaints. In terms of enforcement methods, everyone is well aware that with our case follow-up and our system notification, because of our lack of timeliness, we've been holding over 14,000 hearings a year. We know that with a more proactive case management system we will be targeting about a 25% reduction in default hearings.

So it's not that we haven't thought these through. We are thinking about them, because we know that we must have accountability, and this is what this new system will provide us. We don't have accountability now, and we need it.

**Mr Flaherty:** I'm glad you're convinced that the new system will provide all of these things, and I look

forward to seeing the measures in the RFP so that a few years from now we can look, and hopefully that will have happened. But I think we do need to have the benchmarks in order to make some determination, on behalf of the taxpayers of Ontario, whether or not these kinds of initiatives are worthwhile.

In the collections business, it's common to give persons who are working in the business incentives to achieve. Do you do that?

**Ms van Son:** Incentives to our clients?

**Mr Flaherty:** No, to the people who work at the Family Responsibility Office. If they're really good at their jobs, that is, they collect a lot of money for spouses and children, do they get any reward?

**Ms van Son:** I guess the greatest reward is doing your job well and making sure that people get the support they deserve. Do we have incentive programs? No.

**Mr Flaherty:** Have you looked at that? Knowing the industry a little bit, as I'm sure you do, I'm sure you'll agree with me that that's not uncommon. Have you given some consideration to that?

1500

**Ms van Son:** You use the term "collection program." I guess I might argue with you that we're not solely a collection program. I know people think of us that way, but the work that we do with people is about their lives and how they live those lives, so we do think about ways to reward our staff.

The managers have small things that they provide their staff. We have a staff appreciation day that the managers pay for out of their own pockets, and during lunch hour, because the call centre is never allowed to be closed down, we have a staff barbecue for 400 of our staff, through two shifts, and the managers pay for this out of their own pockets. We do all the cooking. Staff really appreciate it, because it does tell them that they are appreciated and valued. But beyond that, we work in the OPS and we're somewhat limited in what we can provide as incentives.

**Mr Flaherty:** It has been a while since I was up to the FRO offices. Are you still in the old Ministry of Transportation in Downsview?

**Ms van Son:** Yes, we are.

**Mr Flaherty:** It has been a few years.

I've been in a few call centres, and I'm sure you've been in some of them. It's not uncommon now for them to have a big screen on the wall where people working in the call centre can tell, minute by minute, how long people are waiting on the phone. Do you do that at FRO?

**Ms van Son:** Yes, we do.

**Mr Flaherty:** So people are able to react to that?

**Ms van Son:** Yes. They are called pixel boards, and we have them on every floor, in most of the corners, and staff can see how the wait times are either going down or going up and the volumes. In their offices and on their computers, the managers are able to monitor each of the staff in terms of someone spending too much time on the telephone or spending too much time off the telephone. They are able to monitor that kind of performance and that management.

**Mr Flaherty:** Has there been any going back of late and looking at so-called deadbeat cases? The reason I ask is that we recently had a call in my constituency office, a gentleman who I guess is supposed to be a payer and who has a mental disability and has not paid in a number of years. We went through this several years ago in my constituency office in Whitby on his behalf, and FRO was satisfied at that time that he has no money and no ability to pay. In fact, he's not working and lives with his elderly parent. They're back again in the past couple of weeks from FRO, and I'm wondering why. Is there some program going on now where you're going back and trying to rejuvenate files that were, I thought, resolved several years ago?

**Ms van Son:** Without knowing the real specifics, I can't answer that.

**Mr Flaherty:** Well, is there any program going on now to pull up old files and try to do something about them? This thing was resolved. This is what troubles me, that my staff and I have to get involved in this case again and go back to FRO—

**Ms Broten:** How do we know it was resolved?

**Mr Flaherty:** Thank you, Ms Broten. It's my turn, I think. I appreciate your point of view. I'm talking about real people now and a genuine problem in my riding with a constituent. That's why I'm asking for an explanation.

**Ms Broten:** —for several days, but in terms of looking at the issues of the auditor, we are over time—

**The Chair:** Order. Mr Flaherty has had the floor for 10 minutes today. He's a regular member of this particular committee and should have his own time to ask his questions.

**Mr Flaherty:** My question was, and my staff in Whitby asked me the same thing, is there some kind of program going on now to resurrect these old cases? That's my question. If there isn't, then I'd like to know there isn't and I can tell my staff that.

**Ms van Son:** Not to my knowledge. I mean, we have our ongoing projects. Unless there has been a phone call that has come in about this particular case—something may have initiated it. But if you wish to give me the particulars afterwards, I could certainly try to follow up for you on that.

**Mr Flaherty:** Thank you.

**Mr Kormos:** In the last year, for instance, how many garnishments of payers' income tax refunds were made? Do you have that data? While you're looking for that, I'm going to ask how many lottery winnings were intercepted.

**Ms van Son:** On the lottery winnings, since 1998 we have collected \$1.3 million.

**Mr Kormos:** Talk about the good news-bad news story. How many people was that? How many instances?

**Ms van Son:** I don't know.

**Mr Kormos:** Can you find that out?

**Ms van Son:** Sure.

**Mr Kormos:** And how many garnishments of payers' federal income tax refund?

**Ms Melanie Herbin:** My name is Melanie Herbin. I'm policy and legislative counsel for the Family Responsibility Office. What we can tell you is that in the calendar year 2004 to date we've issued 1,988 support deduction notices to the federal government. Those would capture income tax refunds, assuming those people were entitled to them. But I can't tell you specifically if each of those resulted in money coming through the program.

**Mr Kormos:** You don't know yet, by and large.

**Ms Herbin:** Yes, that's true. We're going to find out probably in a couple of months.

**Mr Kormos:** That's in the year 2004. So that's in the last 40 days, give or take.

**Ms van Son:** Yes. In 2003, we issued almost 23,000.

**Mr Kormos:** That's 23,000 individual garnishments.

Aggressive enforcement steps: garnishment of bank accounts—numbers.

**Ms Herbin:** I don't know that we track that, actually.

**Mr Kormos:** If you haven't got it now, could you get it for me? I'm going to ask you about that. I'm going to ask you about how many drivers' licences have been suspended; how many federal licences and passports have been suspended; and how many payers have been taken to court for a default hearing. I trust that's the old judgment debtor examination. Is that what they call it? I'm going to ask how many of those have happened. I'm asking for those numbers within a 12-month frame and then, if you've got them, within a broader time frame. When are the mug shots of deadbeat parents going to be getting posted on our government Web site?

**Ms van Son:** What you're referring to is part of the Liberal platform, and we have had some discussions with the minister on this, and she has just recently given us some direction on it. But it will require a legislative amendment in order for us to do that, because we don't have the authority to do that at this particular point in time. So I would assume over the next few months.

**Mr Kormos:** Has that been vetted through the office of the privacy commissioner yet? What has she got to say about that?

**Ms van Son:** I have had discussions with the privacy commissioner, and we're actually meeting with her next week.

**Mr Kormos:** Was that as premature an announcement as the announcement around attempting—appreciate attempting—to strike deals with credit card companies to get information?

**Ms van Son:** It wasn't a premature announcement. It's an initiative that we will be undertaking.

**Mr Kormos:** How hopeful are you that American Express is going to provide you information about American Express's customers?

**Ms van Son:** The issue around the credit cards, as the deputy referenced earlier, is still under review and we have not made any decision about that.

**Mr Kormos:** How hopeful are you?

**Ms van Son:** I think it's a very complex issue and we need to learn more about it.

**Mr Kormos:** And doesn't have a snowball's chance in Hades of coming to life?

**Ms van Son:** I think it's a very complex issue and we need to learn more about it.

**Mr Kormos:** Got you.

We dealt with the mug shots. We dealt with the credit cards. The so-called deadbeats: We were talking about this earlier. What I find interesting is, for instance, back in 1996, after Shelley broke into the office up there, that the Attorney General, Charlie Harnick, responds with a huge announcement about going after deadbeats. Once again there is an attempt to divert the issue away from the meat and potatoes, the viscera, of the operation to going after deadbeats with extraordinary measures. Mind you, after hearing Mr Flaherty, now I know why you didn't get any new investments while he was Attorney General.

You've got them going after deadbeats. Who are these people? We were asking about that earlier. Do you have profiles? Do you have a sense? Surely there's a continuum, from the person like Mr Flaherty's constituent, who has lost his ability to pay—it appears forever—through to the person who lost their job and didn't go back to court to get the variation of the support order, through to the hotshot who is profiled on the front page of the *Toronto Star* who is a flagrant deadbeat. Do we have any idea of where the total number of non-compliance cases fit on this continuum, this spectrum? Do we have any data around that? Do we know who these people are?

1510

**Ms van Son:** I have a problem with the term "deadbeat," to begin with, in terms of how you define that. Obviously, if somebody is going to any length not to pay spousal or child support and owes hundreds of thousands of dollars of support, I guess one could say that was a person who would fall into that category. Can I give you some demographics on it? No, I can't.

**Mr Kormos:** Fair enough. Then, when you're giving us data on the enforcement tactics, some of the enforcement tactics where you go in and scoop the money, like suspension of drivers' licences, like taking the lottery funds, like garnisheeing a bank account, garnisheeing an income tax return, when it comes to suspending passports or federal licences—and I really want to see how many have been suspended—can you also tell us what the impact was? In other words, what was the success rate? This goes to the sort of things Mr Flaherty was talking about. Did suspending the driver's licence result in people coughing up, people putting the cash on the dash, so to speak, or was it futile?

**Ms van Son:** No. Driver's licence suspension is a very strong tool. People like to have their driver's licence.

**Mr Kormos:** Passport suspension?

**Ms van Son:** We have been able to collect \$59 million from driver's licence suspension. That's worthwhile.

**Mr Kormos:** Yes, but we want to know how many driver's licence suspensions and then, out of that number, what percentage. I agree it's a great way of getting people's attention. How many—50%, 60%, 70%—paid

up? What was the success rate? I suspect you say a whole lot of money.

People who opt out: Do we have a number? What's the percentage on an annual basis of the people who get—because Ms Broten, and I think she's probably right; at least, I'm relying upon her numbers, said 51% of all domestic disputes never go through the process where they make a court order such that it is registered with FRO. Is that what you said: at least half?

**Ms Broten:** Those were your numbers.

**Mr Kormos:** OK, but she's the one who related them to us. So of the other 49% of matrimonial or spousal breakdowns or child support applications that are put into your system on an annual basis opt out?

**Ms van Son:** I don't have the number on that. That's something we have difficulty tracking. But we do know that from April 2003 to December 2003, 5,099 people opted out of the program.

**Mr Kormos:** How many opted back in?

**Ms van Son:** That's the problem; I can't tell you that.

**Mr Kormos:** Yikes.

**Ms van Son:** I can tell you anecdotally that we know that two thirds of most people return to the program. But that's anecdotal, so can I—

**Mr Kormos:** That's based on your experience—

**Ms van Son:** That's based on our experience.

**Mr Kormos:** —in your position of stature there at the Family Responsibility Office, right?

**Ms van Son:** Indeed.

**Mr Kormos:** OK. That's interesting.

**Ms Martel:** Chair, could I just raise a point? For some reason or another in the hearings in 2000, after we did the 1999 report, we were given that statistic. At the time we were told that of the 12,000 who had opted out of the program from the time that Bill 82 was passed until we had public hearings on this in 2000, 8,000 had opted back in. Those were figures that we were given from the ministry during those hearings. Do you not collect that any more?

**Ms van Son:** I'll check into it but my understanding is that—I'll check into it. We'll get back to you.

**Mr Kormos:** Somebody told me just a few minutes ago that there are 40 less caseworkers today than there were in 1994 and that there are 40,000 more cases. Is that what you told me, Shelley?

**Ms Martel:** Yes.

**Mr Kormos:** Is she right? I was in and out of here during the day. Are those numbers pretty close?

**Ms van Son:** That would be pretty close.

**Mr Kormos:** You've got this incredible pressure on you from various Ombudsmen's reports and from auditors' reports about the computer system, which has been described as antiquated. "Ancient computers" were spoken of once. You've responded that you spent \$525,000 in 2001 getting a private consultant to look at the BC system and you're going to spend \$10 million to \$40 million, give or take, on a new computer system to be installed in the course of two years. What have you put to the ministry in terms of your needs for staffing?

**Mr Costante:** I think I answered that one earlier, Mr Kormos. Maybe you weren't here.

**Mr Kormos:** I could have been here and just not listening. But I don't think so.

**Mr Costante:** We are in the process of doing our budget for the coming year. We'll be looking at many options and staffing will be one. We did also answer, and I made a comment in my remarks, that we did add 26 staff very recently to the staff complement. That has happened, so we do have 26 more staff than we had last year.

**Mr Kormos:** What about caseworkers? You talk about this new approach of one worker handling the same file to create that continuity. I trust that you've developed some sort of ratio as to what the optimum number of files is because you are going to spread it out. You're going to give a caseworker some easy ones, some middle-of-the-road ones and some tough ones, right? That would only be fair. I presume you've reached a ratio of how many cases a caseworker can be expected to handle effectively, right? So, how many?

**Ms van Son:** It varies across the province but I think the average is between 700 to 900.

**Mr Kormos:** Is that the current ratio?

**Ms van Son:** No, that's not the current ratio.

**Mr Kormos:** What is the current ratio?

**Ms van Son:** We do have some people who have bigger caseloads than that, but on average it's about 700 to 900.

**Mr Kormos:** That's your goal, to have 700 to 900?

**Ms van Son:** Obviously, we'd like to have a smaller caseload per person, for sure.

**Mr Kormos:** You're going to be able to stick with this even when you've got this single caseworker handling the same file throughout the course of months and years?

**Ms van Son:** We're realigning a lot of our business processes. We are changing our team structure. We're redesigning job descriptions. We are going to do a lot of things to make all of that work well. As the deputy has said, the staffing levels will be discussed and options will be put forward.

**Mr Kormos:** It's interesting, in Quebec the average caseload is 400. In Alberta the average caseload is 335. That's less than half of what the caseload is in Ontario today, right? We know what the caseload is doing in terms of effectiveness. It's not working very well, is it?

**Ms van Son:** It's a challenge.

**Mr Kormos:** You need more staff, don't you?

**Ms van Son:** I think we need lots of things.

**Mr Kormos:** But do you need more staff?

**Ms van Son:** I think we need lots of things. I think we need tools. I think we need a new structure. I think we need many things.

**Mr Kormos:** But do you need more staff?

**Ms van Son:** There isn't one answer to this.

**Mr Kormos:** You need another computer; you weren't equivocal about that.

**Ms van Son:** I think we need to review all our options before we can come out definitively and say what's the answer to the problem.

*Interjections.*

**The Chair:** Mr Kormos—

**Mr Kormos:** OK, I've gone down the list. We're going to get those stats on the various passive and non-passive enforcement measures and the effectiveness. We've dealt with the credit cards—that ain't going to fly; the mug shots on the Web site—can you imagine the lawsuit when you put up somebody's face and name in error? Yikes.

**The Chair:** OK, questions from Ms Matthews.

**Mr Kormos:** Ms Broten will be wanting to practise law again, or Mr Zimmer.

**Ms Matthews:** Clearly, this has been a very badly neglected part of government service over the past decade, and I am delighted that finally we are going to focus on it and make the changes that need to be changed. I just want to comment that this has been a long day for you, I'm sure. You have, for years now, been working under very difficult circumstances, as have your staff. We respect that and applaud the work you've done under those circumstances.

I want to get back to something that was raised earlier by Mr Sterling and Mr Flaherty and others, and that relates to benchmarks. I just want to reiterate how important it is that we have measurable outcomes here. The one outcome that we do use, which is the arrears stats, to me, is pretty useless in that we don't know how long people have been in arrears. It's a cumulative total, so you wouldn't expect it to go down. We don't know how many are technically in arrears but really in compliance; it's just been a bit of a glitch or a time delay. We don't know how many are a result of FRO malfunction. We don't even know how many are dead. Is that right?

**Ms van Son:** We certainly get notified through a variety of means when somebody has died.

**Ms Matthews:** If somebody died and they had arrears, would it still show as arrears?

**Ms van Son:** No, we would close the case.

**Ms Matthews:** You would close that case. So those are active cases only. All I'm saying is that those aren't particularly useful stats.

My question though is, following up on Mr Flaherty's comment, I understand that there were performance measures in place some time ago. I think you mentioned that earlier, that there were performance measures that were no longer put out there.

**Ms van Son:** Yes, that's correct. We had performance measures a number of years ago that were developed with management board, but at some point in time, the decision was made to not go forward with those performance measures.

**Ms Matthews:** Can you tell me why?

**Ms van Son:** I think basically we were not meeting them and there was some concern about that, obviously.

**Ms Matthews:** So if the report card is showing all failures, you just stop issuing the report card. That's what happened.

**Ms van Son:** That appears to be what happened, yes.

**Ms Matthews:** Can you tell me when that happened, when they stopped issuing those performance measures?

**Ms van Son:** It was probably about a couple of years ago.

**Ms Matthews:** A couple of years ago? So the same people who are calling for performance measures now are the ones who cancelled them in the first place?

**Ms van Son:** Certainly we have our compliance measure, which is a public measure, but that's the only one.

**Ms Matthews:** That's the only one?

**Ms van Son:** Yes.

**Ms Matthews:** But there were others?

**Ms van Son:** Yes.

**Ms Matthews:** OK. Thanks.

**The Chair:** In that light, could you then provide us with those performance standards now? Can you provide us with those performance standards that you claim were not—

**Mrs Sandals:** They were told not to collect them.

**The Chair:** You didn't collect them?

**Ms van Son:** We don't track them, no.

**The Chair:** What were the performance standards?

**Ms van Son:** The performance measures at one point were the wait times on the telephones, the number of calls received, the compliance rate. There was a measure around something that had to do with the arrears. It was all tied in to funding that we received at some point. To be honest, at some point we just stopped being asked for them, so we no longer provided them. I don't think it's—

**Mr Flaherty:** That's a little different.

**The Chair:** It's public knowledge. We've got it in the report from the researcher.

**Ms van Son:** I'm not trying to hide anything from you. I'm just saying that we were no longer required to provide them.

**The Chair:** Thank you very much for your long day. We appreciate the deputy's staying for the full day and, again, your ability to answer as directly as possible. We appreciate it very much. Thank you.

*The committee continued in closed session at 1523.*





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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 12 February 2004

# Journal des débats (Hansard)

Jeudi 12 février 2004

## Standing committee on public accounts

2003 Annual Report,  
Provincial Auditor:  
Ministry of Health  
and Long-Term Care

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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Thursday 12 February 2004

Jeudi 12 février 2004

*The committee met at 1043 in committee room 1, following a closed session.*

2003 ANNUAL REPORT,  
PROVINCIAL AUDITOR  
MINISTRY OF HEALTH  
AND LONG-TERM CARE

Consideration of section 4.09, drug programs activity.

**The Chair (Mr Norman W. Sterling):** Good morning. My name is Norman Sterling. I'm the Chair of this committee. Mr Hassen, Deputy Minister, I thank you for appearing in front of this committee. I know how busy you can be. I know how busy Dr McCutcheon would be as well. I understand that you have some opening remarks. If you would like, I'll offer the committee an opportunity to ask you questions, and after that you would be free to go.

**Mr Phil Hassen:** Thank you very much. I appreciate your indulgence. Within about an hour, at 11:30, I do have another commitment and I just want to forewarn. But Dr McCutcheon is really the expert in this area, as you often know. I'm a face and a name, but I do depend on and am well served, and the ministry is well served, by Dr McCutcheon and his staff.

Let me first open and thank you. Good morning to everyone, Mr Chair and committee members. As the Chair mentioned, my name is Phil Hassen. I'm the Deputy Minister of Health and Long-Term Care. It is clearly my pleasure to be before you on the standing committee on public accounts to report on the current status of the Provincial Auditor's recommendations with respect to drug program activity.

We appreciate truly the Provincial Auditor's work and welcome his recommendations, and I think you'll see that we've actually done a number of things in that regard. So appropriate actions have already been taken in response to many of the Provincial Auditor's recommendations, and the Ministry of Health and Long-Term Care will continue to act upon the remaining recommendations in a timely manner.

I think I should provide you some background. Let me note for the members that in late 2000, the Provincial Auditor's office started an audit of the drug programs branch. Auditors were on site in the branch for approximately eight months. The auditor's review encompassed all areas of the branch, including what's called the Health

Network System—we'll speak to each of these later—special drugs program and the Trillium drug program. The final report contains 20 recommendations and was released in late November 2001.

The branch took corrective action in response to some of the recommendations. Other recommendations required additional resources and longer time frames to implement. Still others required government decisions; for example, the recommendation to integrate the special drugs program with the Trillium drug program.

Further to the release of the 2001 annual report, the Provincial Auditor approached the ministry for a progress update on the ministry's response presented in the report. The ministry provided a progress update on March 14, 2003, which was published in the Provincial Auditor's 2003 annual report as a follow-up. This is our second progress update.

Before I delve into the details of our response to the auditor's report, I think it would be useful to provide the members with a general overview of the ministry's drug programs.

The drug programs branch of the Ministry of Health and Long-Term Care, for which Dr McCutcheon is responsible, develops and manages drug programs to ensure that the best possible pharmaceutical services are provided to Ontarians to help keep them healthy. At the same time, the branch works to achieve the desired balance between drug costs and their benefits to consumers, always a difficult task but one done well, I believe, by the branch. Drug programs play an important part in an integrated approach to family and community health care.

The Ontario drugs program consists of several components:

First, the Ontario drug benefit program is available to residents of Ontario with a valid Ontario health card who meet one of these criteria: are 65 years of age and older; residents of long-term-care facilities; residents of homes for special care; receiving professional services under the home care program; or receiving social assistance, that is, Ontario Works program or Ontario disability support program.

With respect to the Trillium drug program, it is for people who are not otherwise eligible for ODB, or Ontario drug benefit, and who have high drug costs in relation to their income.

Third, the special drugs program covers the full cost of certain expensive outpatient drugs used to treat specific

diseases or conditions for the long term or for the remainder of a lifetime. Examples of these range from schizophrenia to end-stage renal disease.

Both the Ministry of Health and Long-Term Care and the Ministry of Community and Social Services fund the ODB program. In fiscal year 2002-03, that program grew by approximately 14.3%. Total expenditures for this period were over \$2.6 billion. The ODB program's formulary defines the list of benefits and includes over 3,600 drug products. Before a drug can be considered for listing in the formulary, it must have received a notice of compliance and a drug identification number from the federal government. Even if a product is approved for use in Canada, it will not necessarily automatically be listed as a drug benefit under the ODB program. It is the manufacturer's responsibility to seek listing in the formulary by filing a complete submission to the ministry's drug programs branch for review by the drug quality and therapeutics committee, DQTC.

That committee provides independent specialist advice to the ministry on drug-related matters such as the evaluation of new drugs, monitoring and evaluation of current formulary listings, pharmaceutical and therapeutic questions and education about publicly funded drug programs. The committee comprises 11 members and the chair and includes experts in the fields of medicine, pharmacology, health economics, epidemiology and other disciplines. Once a product has been recommended for listing by the DQTC, the ministry then works with the manufacturer to achieve appropriate utilization and optimal cost management by establishing written agreements for brand name products.

#### 1050

With respect to the Health Network System, HNS, this is critical to the administration of the Ontario drug benefit program. This is a province-wide computer network system that links Ontario pharmacies directly to the ministry. It is the largest real-time on-line system in the Ontario government. It validates eligibility, generates payment to the pharmacist, calculates the government's share of eligible prescription costs and provides utilization and review information messages that are essential for our capacity to evaluate what's going on. The network also identifies potentially dangerous drug interactions, duplicate prescriptions, multiple doctoring, inappropriate or fraudulent use of the health system, and copayment levels for ODB-eligible people.

The network currently links over 2,800 Ontario retail pharmacies to the ministry and processed over 62.5 million claims in the 2002-03 year.

The ministry is undertaking a strategic review of the ODB program involving stakeholders, aimed at improving pharmaceutical care for patients through a more effective, patient-focused and sustainable program. We are also working with Canada Health Infoway on some projects in regard to this.

Let me turn to the specifics of the Provincial Auditor's report. The Provincial Auditor's report focused on three areas: (1) the drug programs branch policy, which

encompasses the drug formulary, pricing and the special drugs program; (2) drug programs branch operations, which includes formulary modernization, temporary eligibility, Trillium drug program, performance measurement and reporting, contract management, inspections, verification of limited use forms, and the written agreement process; and (3) the ministry's Health Network System—that is, system security, claims processing, drug use review, warning and information messages.

Let me outline for you in broad terms our progress to date and what we expect to accomplish in the short as well as the long term.

The ministry has addressed the following recommendations with respect to drug program branch policy. In keeping with the government's mandate, the ministry is developing strategies to help maximize potential savings to the drug programs by listing generic drugs on the ODB formulary in a more timely way. The ministry is still working on ways to better control the drug costs of Ontario's drug programs, review the generic pricing rule, assess the cost/benefits of pricing options in other jurisdictions, ie reference drug pricing, and will be informed by the work from the drug strategy review. The ministry is working with hospitals to automate and tighten the accountability process of the special drugs program. The ministry continues to review the special drugs program and make improvements in this area.

The ministry has addressed the following recommendations with respect to the drug program branch operations:

To ensure that drugs listed on the Ontario Drug Benefit Formulary are appropriate, cost-effective and in keeping with the latest clinical evidence, the ministry has completed six drug category reviews since December 2002 and will be conducting seven additional drug category reviews over the next year. The seven include hormone replacement drug products; glaucoma drug products; diabetes drug products; proton pump inhibitors; anticonvulsants for pain; COX-2 drug products like the anti-inflammatory Celebrex; and Neupogen, used to treat neutropenia, a shortage of white blood cells.

To ensure that temporary eligibility is being granted only when justified, the ministry has increased the frequency of updates to the eligibility information feeds from MCSS, the Ministry of Community and Social Services, and has reduced the incidence of these claims by approximately 50% from the previous year.

To address the Provincial Auditor's recommendation to reduce or eliminate underpayments of the Trillium drug program deductible, the branch is finalizing and working toward an agreement with the Canada Customs and Revenue Agency for electronic information-sharing, which is expected to be finalized in 2004-05.

To provide better accountability to the public and the Legislature, the ministry is working in a FPT—or federal-provincial-territorial—setting to develop indicators in response to the First Ministers' Accord on Health Care Renewal.

The recommendation to implement the pharmaceutical audit system to facilitate the work of inspectors has been

completed. In addition, the branch will review audit activities in other provinces and work with the anti-fraud branch to ensure audit functions and resources are adequate to verify claims.

The branch has worked with the internal audit branch and has made many improvements to the internal contract management framework. As such, the specific recommendations from the Provincial Auditor will be addressed in future contracts.

The branch is currently working on ways to modernize the limited-use mechanism and continues to work on the written agreement process.

The ministry has addressed the following recommendations with respect to the Health Network System:

To address concerns regarding HNS security, the ministry has consolidated and updated all security documents and reviewed the security administration process. The ministry will continue to implement security procedures as required and will also continue to conduct periodic reviews of exception criteria to assist in claims verification.

The ministry is working toward developing the functionality of the next generation of the HNS through a technical assessment of future needs in order to develop options for long-term viability of the system.

For the next-generation HNS, the ministry is considering enhancements such as electronic prescribing tools and sharing drug profiles to implement drug use review, as well as developing more advanced drug interaction tools to improve the effectiveness of the warning and information messages provided by the HNS.

As you know, the Provincial Auditor's report set out 20 separate recommendations. Let me turn to those recommendations and our response.

Item 1, drug use review:

"To help ensure that Ontario's drug programs encourage the economic and appropriate use of prescription drugs and result in optimal improvement in the health status of recipients, the ministry, in consultation with other stakeholders, should:

"establish a drug use review program; and,

"ensure that the HNS provides accurate and complete information to implement drug use review."

The ministry promoted appropriate prescribing and utilization reviews with other stakeholders through the drug strategy review. That review's mandate is to find ways to optimize pharmaceutical care in order to ensure access to the drugs Ontarians need, now and in the future. The DSR is undertaking a review of the Ontario drug benefit program, ODB, and developing a strategy aimed at improving pharmaceutical care for patients that will include an examination of access to new and existing drugs, cost-effectiveness and pricing of drugs, appropriate drug use and program administration. Next steps planned for the DSR include the release of the interim report and sectoral consultations, followed by a final report.

Second, the ministry is studying the review process with the pharmaceutical industry and Drug Utilization

Advisory Committee to ensure there is no duplication with other ongoing work such as the DQTC—Drug Quality and Therapeutics Committee—modernization.

Third, the ministry has utilized the evaluation conducted by the Institute for Clinical Evaluative Sciences to support ongoing work with DQTC modernization and to identify areas that may benefit from interventions to improve appropriate prescribing and utilization as part of ongoing DQTC activities.

Fourth, the ministry has contacted the College of Physicians and Surgeons of Ontario to generate a list from them of numbers for the HNS database. Ministry staff continue to participate in ongoing discussions with CPSO.

As well, e-prescribing tools including algorithms and sharing drug profiles are being considered for the future, with an expected date of completion around 2008. That will give us greater efficiency and help to ensure prescribing best practices.

The second recommendation, on the drug formulary:

"To help maximize potential savings to the drug programs activity, the ministry should pursue more timely updating of the Ontario Drug Benefit formulary when: adding approved generic drugs; and, implementing manufacturers' price reductions."

The ministry has endeavoured to strike a balance between enhancing efficiency and ensuring that drug review procedures are cost-effective and meet the needs of Ontario drug benefit recipients.

The government's goal is to continue to issue quarterly updates to the formulary. Since 1998, the ministry has released 15 formulary updates in a 57-month period. This includes three new formulary editions—editions 36, 37 and 38; six updates to edition 36; four updates to edition 37; and most recently two updates to edition 38—update A, effective April 16, 2003, and update B, effective September 4, 2003.

**1100**

For submissions received in 2002, the average time to listing of the product in the formulary was 303 days, when looking at receipt of the manufacturer's submission. The ministry has met with Health Canada to further harmonize the drug listing process for generic products.

Legislation is required to maximize streamlining. Monthly formulary updates for generic products are under government consideration. It is expected that the time to listing for these products will further decrease.

The ministry participated in FPT discussions on generic streamlining in March 2003. As of September 4, 2003, Ontario has one of the most streamlined drug submission review processes. As a result, ongoing work at the FPT level will be on an information basis only.

The third item, formulary modernization: "The ministry should ensure that drugs listed in the Ontario Drug Benefit Formulary are regularly reviewed so that the Ontario drug benefit program only covers the cost of drugs that are appropriate and cost-effective."

Six drug category reviews have been completed since 2002. Over the next year, the DQTC is reviewing—I think I've already mentioned all of those. The hormone replacement review has started. The glaucoma drug products review has started. The COX-2 drug products review is planned to start in the spring. The diabetes drug products review has started. The proton pump inhibitors review has started. The anticonvulsants for pain review has started. The Neupogen review is planned to start in 2004.

With respect to pricing: "To better control the drug costs of Ontario's drug programs and to enable the ministry to more effectively negotiate prices with drug manufacturers, the ministry should routinely compare the prices it pays for drugs with the prices paid by other provinces. The ministry should also review the generic pricing rule to ensure that it does not impede the ministry from obtaining generic drugs at the lowest possible price."

Prices are set in agreements between the ministry and the manufacturer in accordance with the regulations now in place.

As part of the work being done by the FPT working group on drug prices, a study was conducted comparing the retail prices for all drugs claimed under the programs of six provinces: Nova Scotia, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. The results of the study indicate that, for patented drugs, Ontario was the lowest-cost province. On average, Ontario prices were 1.5% below Canadian prices. For non-patented drugs, Saskatchewan was the lowest-cost province and Ontario was the next lowest. On average, Ontario's prices were 2.4% lower than Canadian prices. For generic products, Saskatchewan was the lowest-cost province and Ontario was the next lowest. Ontario prices were on average 1.3% below the Canadian average. The ministry is reviewing the present pricing policy for generic drug products through the drug strategy review.

On reference drug pricing, the Provincial Auditor recommended: "To help ensure that it obtains better value for money for its drug expenditures, the ministry should assess the costs/benefits of pricing options that have been successfully implemented in other jurisdictions."

The ministry has regularly examined and will continue to examine the pricing options used in other jurisdictions. Canada's Patented Medicine Prices Review Board states that the prices in Canada are approximately 10% below the median of international prices. Ontario is a participant in the FPT working group on drug prices that is examining price initiatives across jurisdictions.

As part of the pricing of drugs, the drug strategy review will examine medium- and long-term pricing options for both brand names and generic drugs to achieve fair and reasonable prices for new and existing drugs. The review is also undertaking research on key pharmaceutical policy trends, including pricing strategies in select jurisdictions to inform the work of the review.

The sixth item from the Provincial Auditor, regarding agreements with the brand-name manufacturers:

"To help ensure that drug costs are more effectively managed, the ministry should evaluate the extent to which the current written agreement process with drug manufacturers is meeting its objectives; and make improvements as required."

The ministry identified the need for a review of the written agreement process in 2000 and an internal report on the written agreement process has now been completed. Internal work has begun, with planned completion by spring 2004.

With respect to the Health Network System, the Provincial Auditor stated:

"When selecting a vendor to provide long-term services without using a competitive process, the ministry should ensure that it:

"receives value for money through respective contracts with such vendors; and

"complies with Management Board of Cabinet directives."

Since our last follow-up, a consultant was hired to develop a business case and an RFR—request for review, is that what it is?—for a vendor of record to conduct a value-for-money audit. The ministry is moving toward decisions related to an RFP for the next Health Network System.

As part of the analysis phase in preparing of the RFP an assessment, including a review or value-for-money audit of the HNS, both the on-line transaction process system and ancillary systems, is being carried out to determine its long-term viability in terms of both software and hardware. The expected date of completion is the winter of 2004.

With respect to claims processing the auditor said:

"To help ensure that pharmacy data within the Health Network System is complete and accurate, the ministry should periodically verify pharmacy registrations with the Ontario College of Pharmacists.

"To help ensure that only eligible individuals receive benefits for the Ontario drug benefit program, the ministry should:

"review and follow up on exception reports, which identify mismatched or missing information in the" HNS "recipient database; and

"regularly compare data in the," at the time, "Ministry of Community, Family and Children Services' database with the network's database."

The ministry pharmacy registration desk communicates with the Ontario College of Pharmacists on a daily basis to verify pharmacy closings and pharmacy ownership, information that has been provided directly to the ministry. The ministry will continue to look at real ways to enhance verification of the Ontario College of Pharmacists' registration information, consider making this a mandatory part of the network agreement and investigate the potential for regular updates with OCP. The ministry is conducting periodic reviews with exception reporting and is working with the Ministry of Community and Social Services to ensure the recipient is as accurate and

up to date as possible. The ministry will also do another verification to ensure accuracy.

#### Temporary eligibility:

"To help ensure that temporary eligibility is being granted only where justified, the ministry should:

"periodically verify the adequacy of supporting documentation maintained by pharmacies where there are significant numbers of unsubstantiated claims; and

"together with the Ministry of Community and Social Services, expedite necessary improvements to the MCSS database."

Since our last update, MCSS has moved from a weekly to a daily feed. This will be monitored to determine whether a continued daily feed is operationally sustainable. The ministry has also reviewed the number of temporary eligibility claims for the period of March 2003 to April 2004 and found that their instance has decreased by approximately 50% from the previous year. Although there are fluctuations, the declining trend is obvious. In fiscal year 2000, we received 140,000 claims per month and in March 2003 we received about 72,000 claims. Let me assure the committee that the ministry will continue to review this on a regular basis.

#### Warning and information messages:

"To improve the effectiveness of the Health Network System's warnings and information messages, the ministry should assess whether:

"the existing warning and information messages need to be revised; and

"other potential drug therapy problems, such as a therapeutic duplication check, should be added to the network."

The HNS uses drug use review tables developed by an external service provider. These are the tables most commonly used for drug interactions and warnings. The tables now in place in the network are the most up-to-date versions available in the market and include a check on therapeutic ingredients and therapeutic duplication that identify drugs in the same therapeutic class. The drug use review tables are a standardized system that helps pharmacists identify potential drug-related problems. Pharmacists decide what action is required within the scope and standards of practice. At this time the DPB is considering including more advanced drug interaction tools as part of the next RFP for this system.

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#### System security:

"To help safeguard information in the Health Network System against unauthorized use, disclosure, modification, damage, or loss, the ministry should:

"assign the responsibility for the network's security to an appropriate senior manager;

"ensure that appropriate security policies and procedures are in place;

"review staff duties to ensure that system access is appropriate;

"implement more rigorous control over the access administration process and system protection; and

"ensure that the network's security is actively monitored."

I'm pleased to report that DPB worked with Green Shield and our information technology human services cluster to consolidate all security-related documentation and update where appropriate. A security document was finalized and approved. The communication network replacement date has been rescheduled to begin in the spring of 2004. The ministry will continue to implement security procedures as required. The security administration process has been reviewed and is managed through one branch manager to ensure more rigorous controls over the access administration process system protection and to ensure that the network's security is actively monitored.

#### Contract management:

"To enhance accountability, the ministry should ensure that it has adequate policies and procedures in place to monitor whether contracted services are carried out in accordance with the terms, conditions, and performance standards set out in contracts."

Staff from the ministry's internal audit branch developed procedures for periodic reviews. As the contract expires in June 2004, the ministry will incorporate recommendations into the new contract.

#### Inspections and verifications:

"To help ensure that inspection resources are used efficiently and effectively, the ministry should:

"implement needed improvements to the pharmaceutical audit system to facilitate the work of inspectors;

"ensure inspection plans are prepared and approved by branch management;

"provide for sufficient management review of the work of inspectors; and

"review the adequacy of the policies and procedures in the draft manual."

We've made good progress in this area: PHAST has been completely implemented. That's the process. The final stage of the training program has been completed. The manual entitled PHAST Key Criteria and Pharmacy Audit Users Guide has been finalized.

#### Inspection coverage:

"To minimize the risk of paying for invalid claims, the ministry should ensure that sufficient resources are assigned for the inspection of pharmacies."

The ministry has a policy of zero tolerance on fraud and reports all cases of suspected fraud to the ministry's fraud unit. The ministry has reviewed and will continue to review inspection activities in other provinces and jurisdictions to determine the most effective method of identifying and inspecting high-risk pharmacies. In addition, the ministry will review the resources in place to inspect pharmacies. The branch is working with the ministry's fraud programs branch on a review, with an expected date of completion of fall/winter 2004.

#### Verification letters:

"To help ensure that the drug programs pay only for valid prescription claims submitted by pharmacists, the

ministry should implement adequate procedures to verify claims with recipients.”

A review with the fraud branch has been initiated to review the audit activities in other provinces. The branch will also work with the anti-fraud branch and audit branch to ensure that its audit functions and resources are adequate. Implementation will be dependent on recommendations from the review.

Verification of limited-use drug forms:

“To help ensure that the costs of limited-use drugs are only covered where warranted, the ministry should:

“ensure that adequate procedures are in place to periodically verify that limited-use claims are supported by valid documentation; and

“enforce recoveries where pharmacists do not provide adequate evidence that limited-use drug criteria have been met.”

Since the ministry will be modernizing the entire limited-use mechanism over the next two to three years, it will not be conducting audits of the existing mechanism at this time.

Trillium drug program:

“To better ensure that Trillium drug program (TDP) benefits are provided in accordance with the intent of the program, the ministry should develop policies and procedures to:

“reduce or eliminate underpayments of the deductible; and

“recover any underpaid deductibles.”

The Health Network System no longer allows a pharmacist to dispense more than 30 days supply of a drug beyond the end of the third quarter, May 30. When an on-line claim is made, the HNS automatically calculates the days supply limit from the dispensing date and, if appropriate, applies the days supply limit.

The branch is exploring an electronic feed of income data from/with Canada Customs and Revenue Agency (CCRA) and is in the process of finalizing the documents required prior to signing a memorandum of understanding. Those documents will be completed shortly.

Special drugs program:

“The ministry should consider whether the special drug program (SDP) is needed in its current form and whether it could be integrated with the Ontario drug benefit and Trillium drug programs.”

In the short term, new brands/formats of existing substances will be added to provide choice of products to physicians, and the special drugs program will be automated to actively manage and increase accountability in the system. Aranesp, for patients with end-stage renal disease, was added to the program. Other brands/formats will be considered for addition over the upcoming months.

The ministry has communicated with hospitals and associations to inform them of the changes to the special drugs program and manufacturers to inform them of the changes to the SDP, as well as the process for adding new brands/formats of existing substances.

Partial automation of the SDP is expected to be complete by spring/summer 2004.

The ministry will continue to consult with stakeholders as it moves toward the longer-term objective of integration of the SDP with the TDP, the Trillium drug program. Benefits of integration include equal and convenient access to drug therapy for all patients, fair treatment of all manufacturers and increased accountability for claimants: patients, physicians, institutions and pharmacies.

Payment processing:

“To help ensure that payments from the special drugs program (SDP) are reasonable, the ministry should:

“establish procedures to compare invoiced amounts to prices in contracts between hospitals and manufacturers;

“ensure any administrative costs being paid to the hospital are justified; and

“monitor the volume of drugs paid for by the program.”

In December 2002, the ministry sent out a notice that the special drugs program would be automated to actively manage and increase accountability. Consultations with hospitals and relevant associations have been held to obtain feedback on concerns, issues and implications of automation.

There are a total of eight categories of products that are reimbursed under the SDP. A pilot project with two categories of SDP products was conducted at three sites to initiate the automation process. This will be rolled out to other SDP hospitals linked to the ministry's Health Network System for on-line claims adjudication over a period of three to four months. Those hospitals not linked to the HNS—approximately 20 of the 40 hospitals invoicing through the SDP—will need to purchase hardware and software in order to get the linkage. Automation of claims from these hospitals will occur over a longer time period, likely four to six months.

During the period of phasing in of automation, both the manual invoicing and on-line adjudication systems of reimbursement will be in place.

Options for automation for the other six categories of SDP drugs are being researched individually, as each category has unique issues such as distribution from sites that act as depots and monitoring programs needed to ensure the safety of therapy.

We've developed a process to check each invoice for non-standard pricing and ensure that all proper documentation has been submitted. This will continue, long term, until full automation begins. If a category cannot be automated, the current invoice process will continue.

The final recommendation of the auditor, on performance measurement and reporting:

“To provide better accountability to the public and the Legislature, the ministry should develop a comprehensive set of performance measures and report regularly and publicly on the performance of the drug benefit programs.”

We undertook to release information annually on the drug program, and DPB has indeed posted the Ontario drug benefit annual report on the ministry's Web site.

In response to the 2003 first ministers' accord on health care renewal, the branch identified 11 possible performance measures. Three of these measures will be investigated further through the pharmaceutical care working group, one of the five working groups established in response to the Romanow commission and the health accord.

That concludes my formal presentation. And now my staff, including my assistant deputy minister, Dr David McCutcheon, and I will be pleased to respond to members' questions.

**The Chair:** Thank you. Does anyone have any questions of the deputy in particular? You may be excused, Deputy.

**Mr Hassen:** Thank you very much. I'll leave him in charge. He'll do a great job for you.

**The Chair:** Ms Munro, do you have a question?

**Ms Laurel C. Broten (Etobicoke-Lakeshore):** Were we not starting with the PA?

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**The Chair:** No. I have to recognize whoever asks first, and the PA hasn't asked me yet.

**Mr David Zimmer (Willowdale):** Just a second. I thought the convention that had developed over the last couple of days was that the PA started first.

**The Chair:** No. In fact, it probably should be the opposition that starts first, in sort of the tradition of the public accounts. I did it because the PA came and spoke to me before so that I was able then to—

**Ms Broten:** That's fine. From our side of the table, Mr Fonseca will take the first question, if that's all right with you. I can follow Ms Munro.

**The Chair:** Members over here, does it matter? No. OK. Go ahead, Mr Fonseca.

**Mr Peter Fonseca (Mississauga East):** Thank you, Mr Chair.

On page 35 of the Provincial Auditor's report he states, "Delays in adding approved generic drugs to the Ontario drug benefit formulary and in implementing manufacturers' price reductions resulted in lost savings totalling \$17 million over a two-year period."

In a speech by the deputy minister, on page 11, he mentions that it takes an average of 303 days, when looking at receipt of the manufacturer's submission, to listing the product in the formulary. Can you please explain what steps are involved in this process and how we can move to reduce this time period? How does this compare for the rest of Canada also?

**Dr David McCutcheon:** Let me first go through the process for submission and then maybe give some explanation as to why there are the different delays.

The first step in the process is that the generic drug manufacturer must get a notification from the federal government that the drug is actually approved in Canada. Following that approval, the generic drug manufacturer is obliged to submit to the branch a request for listing of their drug on the formulary. That particular listing then is reviewed by the Drug Quality and Therapeutics Committee. Following that review, a recommendation is

brought forward in the formulary. The formulary then needs to be approved through the ministry process, followed by the cabinet process. Once the cabinet process has been complete, about three to four weeks after completion, the formulary is published and the drug becomes available at the price listed.

The issues of incorporating delay included the frequency of the formulary. So the first improvement that was made was to bring in quarterly formularies. I think the deputy outlined that. The frequency of which the formularies have been approved has improved in itself very significantly.

The second thing we've done, particularly with generic drugs, is we've made sure that we can fast-track them through the DQTC process so that once we have received a submission—and that submission must be complete—we can go through the process.

The last part that we're looking at, and looking at other provinces, is the question as to whether the cabinet needs to approve a generic addition to the formulary whereas in some other provinces the minister can approve a listing on the formulary. If we got to the minister approving a listing on the formulary, we would then not have the time associated with Management Board and the cabinet committee on legislation and regulations process. So if we can deal with first of all handling the submissions efficiently, if we can deal with removing the cabinet process, then we could get down to a very short time frame of turnaround.

The branch itself was very sensitive to the Provincial Auditor's recommendation and has made improvements in terms of its processing of submissions. So we feel we've got that part down pretty well. What we need to do now is pursue the issue of a change from cabinet approval to ministry approval. That's going to require legislative change, so that process needs to get underway.

**The Chair:** Thank you.

**Mr Zimmer:** On a point of order, Mr Chair: I had a comment from someone in the audience that they're having difficulty following the exchange because of the sidebar conversations.

**The Chair:** OK. Thank you, Mr Zimmer.

**Mrs Julia Munro (York North):** I have questions that I think are somewhat in the same area of concern. I wondered if you could explain for us the difference between working with the manufacturers of a generic brand and a brand name. Is there any difference in terms of the process that is required in terms of application or time taken in the process you've just finished describing?

**Dr McCutcheon:** There are some very significant differences. The first thing is that a generic drug that is coming forward for listing is a generic version of a drug that is already on the formulary. So the first point is that the effectiveness and cost-effectiveness of the drug has been reviewed and approved in the listing of the brand name drug on the formulary previously. The issue for the approval of a generic drug is, first of all, is the generic a pure substitute for the drug that's already on the formulary? The other part then is, what is the price at which the

generic drug will be listed? The current rule is that 70% of the brand name is the list price for the generic drug. So once those are established, then the process can go forward.

The significant difference between the two is that for the brand name they tend to bring in a new drug whereas for the generic they bring in a substitution. Some of the brand listings that we'll get will be a change in the formulation, maybe from capsule to tablet form, or a change in the dosage strength, so they're much more easily handled. The real difference is in a new drug not previously listed. That has to go through a very rigorous process in DQTC. They have to evaluate the effectiveness of the drug and they have to evaluate the cost-effectiveness of the drug.

**Mrs Munro:** I understand, then, the point you made in terms of the difference between these two. But in answering the question asked previously, you mentioned that your recommendation, or your wish—I'm not quite sure which that would be—in terms of eliminating the cabinet process in terms of being able to give the minister the authority would reduce the length of time. I wondered, though: In suggesting that, would that be related primarily to generic as opposed to brand name? Would you make a distinction between those two?

**Dr McCutcheon:** Yes, because the generic is automatically a cost saving and the brand name tends to be automatically a cost increase to the system. So we would need to go through the approval process, unless we reformed the mechanism by which we can estimate precisely which drugs are coming forward in the formulary and do it in some form of a budgetary process. But certainly in my view, the more appropriate process is that where there is a significant increase in cost, that would need to go through the challenge of a cabinet process.

**Mrs Munro:** So your recommendation then would be to separate these two in terms of each receiving a different kind of scrutiny? Is that what you would support?

**Dr McCutcheon:** I think they would both need scrutiny. The question is at what level of approval. If we take the comparison with other provinces, then other provinces can approve at the level of the minister, and that would speed the process.

**Mrs Munro:** OK. My other question: Perhaps you could explain for us what the difference is between a federally approved drug and then the nature of the provincial scrutiny of that drug. You've referred to the DQTC several times, obviously, as kind of our arm, from a medical point of view, of the value of the drugs. I just wondered if you could explain for us what the federal government does. What's the difference between the two processes?

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**Dr McCutcheon:** There's been some change in the process recently, so I'll be very careful and try to be very clear in the answer.

The first piece that the federal government does for a new drug is establish a drug identification number for the

drug. In that process, it determines that the drug is effective for the indications that have been submitted by the manufacturer. So the federal government establishes that the drug is safe and can be used in the areas or modifies the uses that the manufacturer has sought. That's one piece.

The second thing the federal government does is establish a price for that particular drug. In doing that, it reviews, through a C-7 process, comparisons with other countries and helps establish what the maximum price for that drug should be.

In the past, the company would come to the province and the province would make a decision as to whether to put that drug on the formulary based upon the effectiveness, compared to other drugs on the formulary, and cost-effectiveness of that drug.

In the past couple of years, the Premiers agreed to a common drug review process. For this, the effectiveness and cost-effectiveness part the DQTC would do is now being done for the whole country by a common drug review group. That process is just getting underway. Once that common drug review group makes a decision, the province has to decide whether or not it's going to make that a benefit under the formulary. So the province will still have to make a decision whether or not to list, based on the economic situation of the province.

**Mrs Munro:** So would you see that in the future we could expect that less work would need to be done at the provincial level in establishing the value of a particular drug; would it now become more an issue of the economics, if you like, of using the drug?

**Dr McCutcheon:** The ability of the province to pay will be the decision for the province.

**Mrs Munro:** Would you suggest that will also contribute to shortening the time for a drug, from the point at which it is applied for to the eventual decision?

**Dr McCutcheon:** The hope is that the total time taken to get the drug listed will improve with the common drug review process. Ontario is very concerned—and we have to look for the outcomes of the common drug review process—because we have fought very hard for the drug review process to occur as frequently as our DQTC used to meet. Originally they were planning to meet every two months, and we meet every month. We don't want a common process to delay listing of drugs on our formulary. We're working very hard on the federal-provincial level to make sure the process and the outcomes, particularly for new drugs, are at least as good with the common drug review as with DQTC, and then we would look to improve it subsequent to that.

**Mrs Munro:** Have you identified any significant differences in this new common process vis-à-vis Ontario and any other group of provinces based on the sheer numbers we deal with in this province in comparison? I'm asking that from the perspective that with 11 million people in the province and the differences with the other provinces, does this create some special problems for Ontario going into that common process?

**Dr McCutcheon:** I don't think it creates any special problem. From the process perspective, I think our

biggest concern is that the new process be as quick as the previous one was.

The issue we really need to look at is that there are different drugs on the formulary in different provinces. That's because they have made different decisions in the past than Ontario has. The Quebec formulary, for example, is different from the Ontario formulary. Part of the reason for that is the benefits in one province are different from the benefits in another, so ability to pay, the amount of deductible and these kinds of things vary quite considerably.

While we might get a common drug review process, whether we end up at the end of the day with the same formulary from one province to another is a whole different matter.

**Mrs Munro:** Thank you very much.

**Dr McCutcheon:** You're very welcome.

**Mr John R. Baird (Nepean-Carleton):** On a point of order, Mr Chair: I just want to raise a concern that's been brought to my attention by my colleague from Nickel Belt about the format of the rotation. I'm just asking, perhaps, for some thought by you, Mr Chair and members of the committee, and I concede that I'm not on the committee on a full-time basis. This is a government oversight committee whose primary role is to be a legislative branch check on the executive branch. In the standing committee on finance and economic affairs, we have a rotation where the member from the New Democratic Party has an opportunity to participate fully. I know Ms Martel has been a member of this committee for quite some time and has expressed a concern, and it's certainly one the official opposition shares.

I'm asking—not quoting a section of the standing orders—what consideration might be given that would allow her or her substitute to perhaps, as one of the three members of the opposition, be able to ask questions in this oversight committee? What consideration might be given? I'm not throwing out this section of the standing orders, but I'm just raising it as a concern that might be addressed.

**The Chair:** I had actually asked our House leader and yourself whether you wanted to formalize or reach an agreement with regard to the House leaders in terms of giving direction to the committee. I've attempted to keep it somewhat informal, tried to allow every member of the committee to participate, tried to keep track of time taken, in terms of dividing up time in rotation. For instance, this morning Mr Fonseca took a very brief amount of time and Ms Munro took almost 15 minutes. In determining who's next on the rotation, I try to take that into account. If the House leaders want to debate that—I don't want to get into a long point of order; we've sort of been able to work informally.

Yesterday we had two members of the third party here. Our rules for debate in the Legislature, which I believe we have to mirror in committee, call for much less debate time for the opposition. Then again, this particular committee's primary function is to call the government to account, and that has to be taken into

consideration. I invite you, as our deputy House leader, to raise this issue with Mr Duncan, the government House leader, if you want to bring more direction, but I don't think there's a clear answer to this.

**Mr Baird:** It's just a concern I wanted to raise. I was a parliamentary assistant, and I have a very high regard for Mr Fonseca and the other individuals who serve as parliamentary assistants. They are members of the executive branch of government as well. So particularly on this committee, the government agencies committee and the estimates committee—the three oversight committees—just a request, not a demand, not slamming my fist on the table; I just ask for consideration on that issue.

**The Chair:** OK, but I do invite you to discuss it with the other House leaders. Obviously, the government side has six members here. They control the votes in this particular committee. They have, in my view, been patient in terms of allowing Ms Martel and Mr Kormos quite a bit of time yesterday. They haven't, in my view, tried to limit the opposition.

**Mr Baird:** I'm not suggesting they have.

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**The Chair:** Well, whatever. At any rate, I think it's best to try to accommodate everybody and to try to work it on an informal basis as best we can at this point in time.

**Ms Shelley Martel (Nickel Belt):** I have questions in five areas. I'll go through them as quickly as I can. They follow in the order that the deputy gave us this morning.

Let me just return quickly to the drug formulary. I heard what your preference is. In other provinces you said ministerial approval prevails. Is that in both cases—for brand names being added to the formulary and for generics—or is there a cabinet role for brand names being added and ministerial approval for the generics?

**Dr McCutcheon:** I'll have to get back to you on the specifics of that, but I know for sure that in some provinces the generics are subject to ministerial approval. I just need to do some research but I can get back to you maybe later today on the other piece. I'd be happy to do that.

**Ms Martel:** When you have time that would be great, because if it requires an amendment, and I suspect it would be to the Ontario Drug Benefit Act, it would be interesting to know if there is such a division or if ministerial approval applies to both.

On page 14, the middle of the page, the ministry is reviewing the present pricing policy for generic drug benefits through the drug strategy review. The drug strategy review sounds like it's encompassing a whole number of things. I saw that it was looking specifically at drug prices in other jurisdictions but also a review of the Ontario drug benefit plan, if I'm correct. What are the terms and conditions or the criteria that have been established for the review of the ODB generally and when are recommendations due; and second, can you give us some update with respect to the look at other jurisdictions and drug pricing policies there?

**Dr McCutcheon:** First of all, in terms of the drug strategy review, the scope of that includes access to new

and existing drugs, including how to best operationalize the common drug review, which I mentioned in a previous question, the cost-effectiveness and pricing of drugs, and the transparency in DQTC decision-making and examining price increases in the marketplace resulting in the government paying higher costs through cost-to-operator claims.

If I might explain that just a little bit, the cost-to-operator claim process is a process by which a pharmacist may submit a bill when the supplier of the drug has supplied a drug beyond the cost that's in the formulary. That leads to cost-to-operator claims, so part of the review is to look at the reasons why and some of the issues dealing with that. It's to look at appropriate drug use, and by that we mean making sure the right person is taking the right drug at the right time. It has as much to do with making sure that we're not underprescribing as to make sure that we're not overprescribing, particularly in chronic diseases, and then to look at the administration of the program itself. The review is not looking at eligibility criteria at this time.

**Ms Martel:** I was interested in that, thanks.

Can you give the committee a listing of the people who are involved—you don't have to do that now—the members of the committee?

**Dr McCutcheon:** I'd be pleased to do that.

**Ms Martel:** When do you expect a report (a) on the overall review, and (b) a report, even if it's interim, on pricing policies in other jurisdictions?

**Dr McCutcheon:** The committee is finalizing its recommendations at the moment and then will submit a report to the minister. I'm not sure of the time frame for the other item. I believe it's part of the process and I just need to get back to you in terms of the time frame.

**Ms Martel:** OK, that would be great.

On page 16 you talk about the written agreements with the brand-name manufacturers. The ministry identified a need for a review in 2000 and you have said an interim report is complete and there is some additional work that will be completed this spring. Can you tell me, based on the interim report, what recommendations were made requiring how the ministry should handle the written agreement process? Is that possible? Is that public information at this point?

**Dr McCutcheon:** I can't recall specifically what the recommendations are, but what I can say is that in terms of written agreements, we're looking at more robust written agreements that would deal with items such as price performance in the marketplace, as well as utilization performance in the marketplace.

**Ms Martel:** I'm not sure if I understand that, when you say "price performance." Is that to try and get a better arrangement, a better deal in terms of the pricing?

**Dr McCutcheon:** I think one of the issues that we need to be aware of is that in the current mechanism, we have a situation where there has been no price increase for the drugs that are on the formulary since 1994. So part of the issue is that manufacturers are looking at 10 years as a long time with no change in price. That's one

of the items that we would need to look at, and that's one of the items being looked at within this drug strategy review.

**Ms Martel:** So that could have some significant implications for your costs in your program branch?

**Dr McCutcheon:** It could create issues and benefits, yes.

**Ms Martel:** The next page had to do with your network. The auditor raised some specific concerns about a lack of a competitive process with respect to the renewal of this particular contract. I see on page 16 that you are saying that there has been a consultant hired to conduct a value-for-money audit. I wanted to be clear that the value-for-money audit is on the contract itself—I'm assuming it's the terms and conditions of the contract itself that you have with the vendor—and that that value-for-money audit is going to be completed before the next contract renewal so that any changes can be incorporated into the new RFP. I'm assuming that's what you're doing.

**Dr McCutcheon:** Yes.

**Ms Martel:** Has the consultant been hired and has the audit begun?

**Dr McCutcheon:** Brent will help me in terms of the logistics. This is Brent Fraser. He's a pharmacist and a senior manager in the drug program, and he's responsible for the Health Network System. So he'll help us in terms of detail.

**Mr Brent Fraser:** We've had some initial work done with regard to looking at the terms of reference that would be necessary to complete a value-for-money assessment of our Health Network System. We have not retained a consultant right now to perform this work. Over the next year, we're looking at the system, and as part of that work, we'll be doing two things. One is just a technical assessment of what our current system is capable of doing and what it will be able to do in future. As part of that, we'll also be doing a value-for-money type of review with our current system. So if we were to make changes to the Health Network System, we have this information available to us to help inform the process further.

**Ms Martel:** Does the ministry have particular concerns with the contract that is in place right now? As you head into a renewal, which should be about 2005, are there specific items—I understand the technical part of it; I'm not talking about system upgrades as much as I'm talking about the contract itself with the vendor. That's quite a significant amount of money that is being paid.

**Mr Fraser:** We don't have any exact concerns with the current contract. I think as we continue to use the Health Network System, we're looking at opportunities to really improve the efficiencies of the management of the contracts and looking, really, at opportunities as we continue to use the system for claims adjudication. So there aren't any specific concerns right now that we need to address. It's really to inform the process as we move forward with any future contracts with the Health Network System.

**Ms Martel:** One final question: Did the auditor—and I apologize for not knowing this—in their review have a look at the contract itself and make any recommendations, or was the concern essentially around the process, or lack of process, around that contract?

**Mr Fraser:** I think, specifically, my understanding is that the auditor's concern was that we should be ensuring that we are receiving good value for money with any contract that the ministry signs. So it was really more of an assurance that as we continue with the Health Network System, we continue to ensure that we are always receiving good value for money. I'm not aware of any specific concerns that they had with the current contract.

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**Ms Martel:** OK, thank you. I had a final set of questions about inspections.

On page 21, item 14, you're talking about inspection coverage. I just had a quick question. How many inspectors do you have now who would actually be able to go out and inspect pharmacies and procedures?

**Mr Fraser:** Right now we have five inspectors for all of the pharmacies within Ontario. The inspectors are responsible for maintaining a certain region within Ontario. One inspector is assigned to one area. These inspectors have been with the ministry for a significant period of time and are quite familiar with the territories that they deal with and with the types of services the pharmacies provide in those regions.

**Ms Martel:** And you have, I believe I read in here, about 2,300 pharmacies that are on the network.

**Mr Fraser:** Approximately 2,800.

**Ms Martel:** And is everybody on the network, so you've got 2,800 retail pharmacies in the province that you would try to inspect?

**Mr Fraser:** I would say over 99% of them are connected to our network.

**Ms Martel:** So we've got 2,800 pharmacies. How often do your folks get in to any of these, sir? What's your pattern of inspection? Is there one?

**Mr Fraser:** I'm not sure if I can say there is an exact pattern of inspection. Because we only have five inspectors, we try to ensure that we are using them in the most time-efficient way, I guess. There is a lot of work done looking at the claims that are submitted through the Health Network System to the ministry for payment. The inspectors are all previous managers of pharmacies. They're very aware of the types of transactions that occur in the pharmacies, so they're able to review the claims for the pharmacies that are within their region. What we try to do is identify trends that may be of concern, and those pharmacies would be identified as areas that we should be looking at with a closer inspection, either an on-site inspection or the inspectors will do a more detailed review of the claims that were submitted by that pharmacy over a certain time period.

**Ms Martel:** My final question in this regard: In terms of that look and that review which those five folks are trying to do, can the ministry make an assessment of

what seem to be the common problems? Are you really detecting fraud, or—

**Mr Fraser:** Really, there are two purposes for the inspectors' role. One is really an education component, where they go out to the pharmacies. If we notice that one pharmacy in a region has a higher volume of claims that are submitted compared to other pharmacies within that area, they'll go through and review the claims with them. Sometimes it's a misunderstanding of the processes, so a lot of the inspector's time would be spent sitting down with the pharmacist and explaining the results of the audit or inspection that was done at that setting and identifying areas where they may be able to improve their processes.

There are situations in which the ministry has identified that claims may not have been submitted appropriately. That's not the jurisdiction of the inspectors' responsibilities. They do review the claims, and if they identify that there are specific concerns, we will refer the case further to the Ministry of Health-OPP fraud investigations unit, and it is their responsibility to take that further. So we have referred cases in the past, but a lot of it is that pharmacies just may not be aware of the exact details that are required with a claims submission, so it's just correcting the process before it becomes a problem.

**The Chair:** The last three questioners are Ms Broten, Ms Sandals and Mr Delaney. I would hope we would be able to wrap up after that, unless there are any other members of the committee, so that we can judge our time overall.

Whoever wants to go first.

**Ms Broten:** I wanted to talk for a moment about pricing. The auditor was certainly critical of the pricing of generic drugs and seemed to hold the view that we could effect significant savings across the province if we perhaps implemented systems that were more comparable to other jurisdictions; Saskatchewan is one of the ones I'm thinking about. I wonder if you can just speak to that issue, as to what developments may be coming on-line in this time of fiscal restraint so that we may be able to affect those savings across the province.

**Dr McCutcheon:** The principal strategy is around generic drugs, because PMPRB establishes the price for brand-name drugs. In the process of the drug strategy review we've become aware of significant rebates that pharmacies received from generic drug companies, which suggests that there is room for some price reduction in terms of generic drugs. We also know that, using C-7 comparisons, the prices in Canada for generic drugs are not as close to the median as the brand-name drugs are, so there's room to reduce generic prices when we compare with other countries.

One of the strategies that some other provinces such as Saskatchewan use is a competitive tendering process. But certainly, from looking at what happens in the marketplace, the advantage that Saskatchewan gets in the tendering process is not really as strong as looking at some other ways of potentially changing the generic drug

pricing. So the options really are between a tendering process or between review of the 70% rule that is in place now and to look to a new pricing formula for generic drugs. The discounting or the rebates are obviously in areas where there are multiple products in the same treatment area: the same type of drug, for example for lowering your blood pressure, or whatever it might be. So where there are multiple products there seems to be discounting.

The question is whether the pharmacist should get full benefit of the discount or whether the Ontario drug benefit plan should get some benefit of the discount. That's the opportunity. The question is, what mechanism might we put in place in order to achieve that? So there is potential there. What we need to do is bring forward some options for realizing that. The drug strategy review is dealing with these items. As the recommendations come forward, then I think we can look to those recommendations being considered by government.

**Ms Broten:** Thank you.

**Dr McCutcheon:** You're welcome.

**Mrs Liz Sandals (Guelph-Wellington):** When I talk to constituents, I think the thing that worries the person on the street is, "What happens to me if I or some family member have some sort of chronic or complex illness where the drug costs are just humungous?" the sort of catastrophic drug cost. As somebody who is quite new to this, I'm not sure I understand how the Ontario drug benefit versus the Trillium versus the special drugs program would cover that. I wonder if you could speak very briefly about how those programs address that problem and whether we're satisfied that we are getting good value and are handling that problem appropriately.

**Dr McCutcheon:** I'll start, and I'll ask Sharon to help me with part of the answers. As she comes forward I'll start the answer.

The first thing is that for the purposes that you mentioned—just to deal with the special drugs program—the special drugs program deals with some very specific drugs. If your constituent or friend or whatever had a specific illness, then the drugs dealing with that illness may be covered in the special drugs program. The example I'll give you is that people on dialysis need to have their blood level boosted, so they take EPREX, and that EPREX drug, which is expensive, is covered. That's the first case.

**Mrs Sandals:** So if you have that disease, then that's covered.

**Dr McCutcheon:** That's covered. So the first part of the answer is that it depends on the disease. Then, if you are over 65 you have access to the seniors', or if you're in a nursing home or in home care then the Ontario drug benefit program kicks in. Where the situation is with, say, somebody who is under 65, has a very significant amount of illness and requires a lot of medication, then the Trillium drug program comes into play.

I'll just ask Sharon if she will help me in terms of the specifics of the Trillium program. That program supports not only the individual but the family of that individual as well.

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**Ms Sharon Berman:** Any family that has high drug costs compared to their income is eligible for drug benefits under the Trillium drug program. On average, individuals pay 4% of their income toward the deductible, and then for any eligible drug that's covered under the ODB program they pay \$2 per prescription. As I said, the deductible is based on income. It's adjusted also based on the number of family members. So if you are an individual and you have a high income with relatively low drug costs, you'll pay more in your deductible. If you are a family with children or more than one person in the family, and you have relatively high drug costs compared to your income, your deductible will be lower.

The deductibles originally were paid on an annual basis. In order to ease that payment process, it was converted to a quarterly deductible to make the payment process easier.

Individuals are eligible for the Trillium drug program if they have private insurance and that private insurance doesn't cover all of their drug costs. But the drugs that are covered under private insurance are ineligible for coverage under the Trillium program. So it's a safe gap if you don't have insurance or if you don't have enough insurance.

**Mrs Sandals:** I'm guessing that this one becomes very complex to administer, because it's the one where there seem to be a lot of ifs and decision points around what is covered, who is covered, whether you're in or whether you're out. Is this one of the areas where we're looking for agreements with the feds in terms of information exchanged to expedite that around income levels?

**Ms Berman:** Absolutely. Currently we ask individuals to submit all of their income documentation to us. It's quite an intense process both for the ministry to administer and for the individual to understand which document they send forward. We're in the process of negotiations with CCRA, the federal government, to get an electronic feed of that income documentation so that clients who give us consent to get that information electronically don't have to submit the paper form.

**Mrs Sandals:** That would expedite the process from the patient's point of view but it would also improve accuracy and reduce administration costs from the province's point of view.

**Ms Berman:** Exactly. Yes.

**Mr Bob Delaney (Mississauga West):** I have two what I hope are fairly short questions. I have a passing familiarity with the province of Saskatchewan and some of its systems on drugs. You mentioned that Saskatchewan was able to realize savings of \$54 million annually on generic drugs. Could you describe to me, please, how Saskatchewan was able to do so and what process Saskatchewan uses to set the price of generic drugs?

**Dr McCutcheon:** The number you refer to was in a specific time frame. I'll have my staff help me in terms of what current savings Saskatchewan gets. The process they use is a tendering process for multiple-source

products, so where there are multiple products in the marketplace, they will tender and ask individual companies. I believe the tendering process is on an annual basis, so the companies bid to be the supplier to Saskatchewan for them. It's easy for a relatively small province that does not have an infrastructure like a generic drug manufacturing system to do that. In Ontario, with 12.2 million people, if we were to get into that, we would be creating great seas of production for the different generic companies. So there's an economic issue in terms of looking at that. That's the first part.

The second part: I understand that the savings Saskatchewan got at the time—that number has eroded over time, and staff will help me with the latest number in terms of what Saskatchewan's benefit is over Ontario.

*Interjection.*

**Dr McCutcheon:** We'll get you the exact number, because it varies from year to year and I just want to be precise with it. But my understanding is that the benefit they're getting is not as great now as what it was then.

**Mr Delaney:** Thank you. The actual number may not be necessary. It was the first question that was more important.

Ontario has the largest drug market in Canada and, to use the deputy's figure, it's growing at 14% annually. I believe the deputy covered fairly well how Ontario's drug market compares to other Canadian jurisdictions, but what are the options that you see Ontario has to contain growth, and what processes have you normally followed to date to contain the growth in what Ontario spends on drugs?

**Dr McCutcheon:** Let me just give you a clinical response to that first and I'll explain the reason why. The question of course is, what level of medication is the right level of medication for the people of the province? I'm concerned, as a past practising physician, about reports coming out that show that in Canada and in the world, we have the drugs available—indeed they're covered in ODB—but people with diabetes are not necessarily taking all the drugs they should be taking and therefore they're getting into need for dialysis and getting into eye complications and other complications of diabetes because they're not adequately medicated. That's one issue. Another example is people with blood pressure. Not all of them have their blood pressure lowered to the optimal level, so we need to think about that.

When you think about the program growing, part of the reason the program is growing is that more people are taking more appropriate drugs. One would assume that the reason it is growing is that more people are taking inappropriate drugs; for example, antibiotics. The balance we have to do is to make sure we have more appropriate use—that's some recommendations from the strategic drug review; hopefully, they'll come forward with that—but also to develop patterns of prescribing for chronic diseases. Once we've got that in play, as we look to other jurisdictions, other countries, and compare, the rate of growth in our drug budget is pretty well similar

to—it changes from year to year, depending on what drug gets added, but all of them are growing generally at double-digit rates.

Some of the options you have to consider are, how much of a breakthrough do you need to consider before you add a drug to the formulary? You also have to consider, on the other side, what are the eligibility criteria one needs to look at? Because there are two sides to this. The other aspect, which is difficult, but we know there are factors, is that if we do treat people with diabetes better than we are now, hospitalization for that condition or hospitalization for heart failure will decrease. So it may be right to grow the drug budget but at the same time transfer some of the costs because of decreased hospitalization. That's theoretically possible, but until we have the wait times reduced, we'll always have somebody else in that hospital bed.

**Mr Delaney:** I have a number of pharmacist friends who tell me that one of their principal problems is to ensure that patients for whom drugs are prescribed actually take them.

**Dr McCutcheon:** That's right. Compliance is a very big issue.

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**The Chair:** I just want to ask a supplementary here, because something arose here that I wasn't aware of before. The statement in the auditor's report way, way back in 2001 was that they estimate the ministry could have saved \$54 million annually if it paid the same price as Saskatchewan did for these generic products. There are two parts to a prescription. One part is the actual medicine. The other part is the dispensing fee. What I assume—and maybe you can confirm this—is that in Saskatchewan when you go in for a generic drug, you're not given the option of A, B, C; you take whatever the bid has done, so you take B if that's the one that won. So the pharmacist in Saskatchewan is not receiving a discount because B drug company has got the market.

I think it's relevant, therefore, for us to know whether the pharmacist fees in Saskatchewan are more or less than in Ontario. Essentially, we haven't increased our pharmacists' fees for a long period of time and therefore they've sought other ways to do it. So is the \$54 million a real number? Because what we've basically done is subsidized the pharmacists' fee by allowing them to have a discount in this particular market.

**Dr McCutcheon:** I'll ask Brent if he'll help me with the answer to that. The question essentially is that we need to look at the total cost to the program and that the cost comes from not only the drug but from the dispensing fee, and I just don't know what the comparison of the dispensing fees is.

**Mr Fraser:** I think it's important to note that across the provinces it's very difficult for us to compare dispensing fees. Each of the provinces has its own set reimbursement structure. In Ontario, for example, we have a drug cost, a markup, and a dispensing fee. Other provinces may lump that together as one continuous cost, so it's hard to break it out. We have looked at the fees

across Canada. I would say that Ontario is in line with the dispensing fees of the other provinces. I don't think there is a significant difference between each of the provinces—maybe at the upper end and the lower end, but we all tend to be, I would say, around the \$6 to \$8 mark. But again, there are these other reimbursement structures that are applied.

**The Chair:** The deputy said we were the second-lowest in generics. The only one doing better than us is Saskatchewan, and that's who the auditor signalled on. So what I really would like from you is a comparison with Saskatchewan for, let's say, the 10 most common generic drugs given out. What is the total package costing their drug plan and our drug plan? I'm not sure the \$54 million was a correct conclusion in terms of potential savings back then. If in fact what we have done is mix two compensation schemes and therefore—the \$54 million might be what the auditor has done, but he's been very selective in doing what he has done. So the real question is, what is the dispensing fee for generic drugs here and what is it in Saskatchewan? If you could provide that to me in writing, I would appreciate it.

**Mr Fraser:** We would be happy to provide it at a later date.

**The Chair:** The other question the auditor asked me to ask you was, if we increase the number of inspectors, what would the payback be to the ODB?

**Mr Jim McCarter:** If I could expand, [inaudible] every 10 years to the pharmacies or the agencies, and sometimes if you look, say, at tax auditors, if you hire more tax auditors, you recoup their salaries about the first month they work. I'm wondering, do you think if you increased your inspection resources to 10 or 15 that you'd more than make that up in terms of payback either through education or the claims verification process?

**Mr Fraser:** Based on our current staff, I think we can show that for the number of inspectors we have and the amount of recoveries that are identified through the inspection process, they do recoup their own salaries. So that could potentially be extended beyond the current five. What's happening, though, is that we are conducting

a review of the inspection resources in conjunction with another branch in the ministry fraud programs branch. It's those types of pieces of information we're looking at in order to complete this review so we have further information.

**The Chair:** Mr Zimmer, the last question.

**Mr Zimmer:** Just briefly, on page 325 of the report at the bottom, the last point, "Another jurisdiction, using a competitive acquisition process, was able to obtain prices for certain drugs that were, on average, 60% lower than those obtained by Ontario. Annual potential savings to the ministry could have been as much as \$140 million if it had been able to obtain the same prices for these drugs."

Can you tell me what that jurisdiction was and then what competitive process that jurisdiction used and how the process they used was able to achieve significant savings?

**Dr McCutcheon:** I don't know the specific comparator. The audit was done quite some time ago, so—please, Brent.

**Mr Zimmer:** Just the name of the jurisdiction, the process they used and some thoughts on how they were able to generate those kinds of savings.

**Mr Fraser:** I think one of the comparisons they did when they reviewed the program is that they looked at the federal supply schedule in the United States. The federal supply schedule is the listing schedule for reimbursing drugs for beneficiaries such as the Department of Veterans Affairs. Because of the size of that particular pool of individuals, the States is able to apply a lot of leverage to the pricing of the products reimbursed on that particular schedule. That's really why you see such a distinct price difference between the Ontario drug benefit pricing and the pricing for those schedules in the States.

**Mr Zimmer:** Thank you.

**The Chair:** OK. We are finished. Thank you very much.

**Dr McCutcheon:** Thank you, Mr Chairman.

*The committee adjourned at 1216.*







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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 16 February 2004

# Journal des débats (Hansard)

Lundi 16 février 2004

## Standing committee on public accounts

2003 Annual Report,  
Provincial Auditor:  
Ministry of Consumer  
and Business Services

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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Monday 16 February 2004

Lundi 16 février 2004

*The committee met at 1042 in room committee room 1, following a closed session.*

2003 ANNUAL REPORT,  
PROVINCIAL AUDITOR  
MINISTRY OF CONSUMER  
AND BUSINESS SERVICES

Consideration of section 3.04, policy and consumer protection services division.

**The Chair (Mr Norman W. Sterling):** I don't think I have to tell you who I am; I'm a former minister of these fine people. Good to see you again. Congratulations, Sue Corke, on being Deputy Minister of Consumer and Business Services. Do you still call yourselves CBS?

**Ms Sue Corke:** Yes.

**The Chair:** I'm going to ask Sue to make some introductory remarks and introduce the people with her.

**Ms Corke:** Thank you very much, Chair and honourable members. At your request, I will introduce my staff. Mary Shenstone is the director of sector liaison branch, Rob Dowler is the acting assistant deputy minister for the policy and consumer protection division, Vishnu Kangalee is the acting director of the marketplace standards and services branch. My name is Sue Corke. I've been the Deputy Minister of Consumer and Business Services for one week, and I'm pleased to be here today.

**Interjection:** Congratulations.

**Ms Corke:** Thank you.

I want to reassure you, though, that I have been in the ministry for seven years, and I was the assistant deputy minister when the audit was undertaken, so it's not that new.

I'm pleased to be here today and to have this opportunity to tell you a bit about the ministry and its involvement and response to the 2003 annual report of the Provincial Auditor. I've introduced my staff. They're the key people with me this morning, and they're going to respond to your questions.

As a prelude to my comments, I'd like to say how much we value the Provincial Auditor's report and its findings. We've taken them very seriously, and we have either implemented remedial action or are in the process of doing so on all of them. I believe we actually made available a copy of the status report.

Before I go into details of the Provincial Auditor's findings, I'd like to discuss with you two topics by way

of introduction to the ministry. First, I'd like to outline the mandate of my ministry and provide you with a brief overview of its roles and responsibilities to the consumers of Ontario. Second, I'd like to discuss with you the delegated authority model, or DAAs as we refer to them in the ministry. I'll explain the design and rationale of the delegated administrative authority model and their role in administering industry regulations.

Following that, I'd like to spend some time telling you about the consumer protection branch of the ministry, its responsibilities and how it enforces the many consumer protection statutes under its purview. In particular, I'd like to spend some time talking about how the ministry decides to enforce statutory requirements and deploy its inspection and investigative resources, and provide you with some context to better understand how the ministry approaches its business.

In the interest of time, I will limit my detailed remarks to some of the key areas of the report; namely, those dealing with the governance and accountability of delegated administrative authorities and the enforcement actions of the marketplace standards and services branch.

Of course, at the end of the presentation, my staff and I would welcome your questions about these or any other aspects of the auditor's report pertaining to our ministry.

In terms of a ministry overview, the Ministry of Consumer and Business Services provides a number of services to both individuals and businesses and administers some 67 individual statutes that range from liquor licensing right the way through to land titles. There are not many aspects of our daily lives, actually, that the ministry doesn't touch.

By and large, feedback tells us that we do these things very well. In fact, the ministry has received a number of awards every year from national, international and private sector organizations, including one from the Institute of Public Administration of Canada for the innovative work we've done in establishing delegated administrative authorities.

The ministry also provides integrated services that allow people and businesses to access a number of government services across different ministries, all in one place—an enterprise role. Government information centres, an access and inquiry call centre and Publications Ontario all help make it easier for the public to find more information in less time.

Registration is also a large part of the ministry's responsibilities. The ministry registers businesses and

personal information, including land titles, business records, births, deaths, marriages and changes of name.

Ensuring a regulated and responsible marketplace for the alcohol and gaming industry is also a significant part of the ministry's portfolio, which we share in part with the Ministry of Economic Development and Trade through the Ontario Lottery and Gaming Corp and the Liquor Control Board of Ontario. As well, the Alcohol and Gaming Commission of Ontario and the Ontario Racing Commission both enforce regulations that maintain responsible and regulated industries in the province.

Of course, public safety and consumer protection are key commitments for the ministry, and I'd like to turn now to the second area of my introduction, the delegated administrative authorities.

When the first delegated administrative authority was established seven years ago, a great deal of work was put into developing a statutory system that would be the most responsible and responsive, to ensure the highest level of standards of consumer protection and public safety.

What do I mean by "responsible" and "responsive"? Government must not only ensure public safety and consumer protection, but must also see to it that regulations are workable and adaptable to changes in the marketplace. To do so, we need ongoing relationships with consumer and industry stakeholders to help build consensus about challenges and solutions in the industry.

To be responsible, industry must do what it can to protect the public from unsafe or unscrupulous practices. As a whole, we believe that industries in mature sectors are well positioned to play an active role in raising the bar on compliance. At the same time, it is government's role to ensure that standards and requirements can meet the ever-changing nature of the marketplace, particularly where technological design and innovation are involved.

To be responsive, regulations and regulators must not only fulfill their stated purpose, but they must also adapt to changes in the marketplace to suit the public interest. Regulations must keep up to date with emerging trends, demands and needs and must stay current with different ways of doing things.

With this in mind, it's best to think of the delegated administrative authorities as partnerships between consumers, government and industry that provide greater focus and specialization to regulatory bodies while maintaining government control over standards.

In this partnership, the government sets the standards—sets the rules—and holds the delegated authorities accountable for administering them. It has accountability guidelines, and the ministry keeps a close eye on how well the authorities meet certain challenges. We look for improvements in the governance structure that will meet our mutual goals, and we deliver changes in legislation to enable higher standards of compliance.

In turn, industry and consumers work together to find the best ways of administering the standards set out by government. It is up to each authority to leverage the relationships and knowledge in their fields to come to effective and efficient measures to meet these goals.

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By doing this in specialized areas, delegated administrative authorities are able to develop expertise in their field that in turn gives the authority more credibility. It allows regulatory practices to change more quickly and adapt to a dynamic marketplace, providing better, more up-to-date protection for consumers and public safety.

In short, the DAA model allows the government to set goals for a series of specialists in focused areas to administer. It allows the government to steer, rather than to row. Most of the delegated authorities are created under the Safety and Consumer Statutes Administration Act, 1996. The Technical Standards and Safety Authority, the Electrical Safety Authority, the Real Estate Council of Ontario, the Ontario Motor Vehicle Industry Council and the Travel Industry Council of Ontario were all designated under this legislation. The act, combined with a number of other measures, creates a strong accountability relationship between the authorities and the ministry.

The Safety and Consumer Statutes Administration Act requires administrative agreements and annual reports to be tabled to the Legislature. The ministry also has a dedicated staff unit to monitor the overall success of the authorities and to look strategically at anything needed to improve the framework of legislation and regulations to assist in meeting their goals.

The Ontario New Home Warranty Program and the Board of Funeral Services are slightly different. They were created decades ago under their own unique statutory frameworks. Whereas the newer authorities have binding administrative agreements set out in the act, the Ontario New Home Warranty Program and the Board of Funeral Services operate under different legislation that does not provide for these agreements.

An independent evaluator concluded that the delegated authorities are doing a good job. There are more inspections, more rigorous enforcement, greater protection for new home buyers, and more focus and transparency in these fields than ever before. For example, TICO, RECO and OMVIC, the travel, real estate and motor vehicle councils, have more than doubled the investigation, inspection and enforcement resources available to enforce these statutes since 1996.

Of course, all our DAAs continue to have close working relationships with the ministry through a wide array of formal and informal accountability mechanisms, including board representation by senior ministry employees. All four of us here today are actively involved in board membership of one sort or another. This enhances the accountability relationship between the ministry and the authorities, helping to make each other more successful.

I hope this overview to my ministry and its DAAs is helpful. Now I'd like to just discuss the consumer protection program of my ministry, administered by the marketplace standards and services branch.

As I've said, the delegated administrative authorities are specialized to deal with their selected areas of focus.

All other retail businesses are covered by the marketplace standards and services branch, which administers consumer laws of general application and sector-specific statutes not delegated to the DAAs.

The marketplace standards and services branch administers 15 major statutes, including the Consumer Protection Act and the Business Practices Act. This legislation, broadly speaking, gives the ministry the authority and duty to help ensure a fair marketplace.

The public face to the branch is the consumer services bureau. Its role is to receive consumer complaints and inquiries from the public, and to provide advice, mediation and enforcement on a variety of consumer issues. In concert with licensing and registration, and investigations and inspections sections, the bureau ensures compliance with some 10 different pieces of legislation, including the Collection Agencies Act and the Theatres Act, which I will return to discuss in greater detail later in my presentation.

To ensure compliance, the ministry has a range of measures available to it. They exist on a continuum to appropriately deal with offences from the very minor to the particularly egregious. For example, the ministry may inspect a licensed place of business, investigate alleged wrongdoing, issue orders or suspensions or lay charges, depending on the nature of the complaint and applicable statute.

I'll discuss the range of measures again in a moment, but I'd first like to highlight how busy this branch is. The staff size of the branch is between 65 and 70. In 2003 alone, the ministry's consumer services bureau received more than 68,000 calls from consumers. In addition, it received another 6,800 written complaints about businesses. The bureau opened more than 240 investigations that led to 330 charges being laid. In the end, the ministry successfully obtained more than \$625,000 in restitution either through mediation, court orders or court-imposed fines.

I am pleased to note that the auditor said, "The investigations the ministry had conducted were generally performed in a satisfactory manner. As well, where mediations were possible, we noted evidence that appropriate efforts had been made to obtain restitution for consumers."

While the ministry is very active in protecting consumers, it is important to remember that it does not act alone. Since scammers do not respect jurisdictional boundaries, the ministry works with a number of partners who have shared interests. This includes agencies from law enforcement, municipalities, other provinces, the federal government and other governments. One of the most innovative projects in this branch is the cross-border alliance on deceptive telemarketing scams with the Federal Trade Commission and the US Postal Service and the OPP.

In recent years, the ministry has won awards for its consumer protection activities, including the US Consumer Agency Achievement Award, the Institute for Public Administration of Canada's award and the Ontario Public Service Amethyst Award.

In the end, though, it is still an open market and that means consumers must take precautions to protect themselves. As a result, a significant focus of the ministry is aimed at prevention through education. For example, just over a week ago, the minister launched a very successful program at Toronto police headquarters to help people avoid identity theft. And earlier, in December, the minister launched the Ontario fraud-free calendar, which is distributed to the public in conjunction with partners from payment card companies, the OPP, the Ontario Securities Commission and many other public- and private-sector partners, including the Consumers Council of Canada and credit reporting agencies.

I'd like to spend my remaining minutes speaking in more detail about the auditor's specific findings regarding the ministry's consumer protection duties in relation to its allocation of inspection resources and governance issues associated with the delegated authorities.

A significant portion of the auditor's report dealt with the allocation of marketplace standards and services branch inspection resources and recommended that the ministry distribute them in a manner that is consistent with risk to the public. I am pleased to report to the committee that this has been implemented. The ministry has adopted a risk-based framework to determine how to allocate its scarce compliance resources, based on criteria developed by an independent risk management expert. In fact, the ministry was in the process of developing this framework while the auditor was conducting his review and we're happy to see that he has noted this and endorses the direction.

This risk-based framework will help the ministry to deploy its field inspection resources in a manner that will have the greatest positive effect and will provide the regulatory flexibility needed to cater to urgent ministry priorities.

There is a wide range of tools available to the ministry in enforcing its consumer protection statutes and we will continue to do that in a way that makes sense. I've referred to some of these measures earlier but some of these are subtle yet important distinctions that I want to make clear.

For example, the auditor stated that adult video stores were inspected in 2001 and 2002 more often than collection agencies were, despite a higher level of complaints for collection agencies. This is true, but there are good reasons for that. One related to the introduction of a new stickering program for adult videos in that time period. The second related to the appropriateness of inspections as a compliance tool for collection agencies. The third related to the fact that complaints in the adult video sector really aren't a valid indicator of non-compliance in that sector. Actually, we rarely hear consumers of this product complain. To be clearer, one needs to understand that just prior to the time period reviewed by the auditor, fiscal year 2001 through 2002, the ministry had released new requirements to provide proof that adult sex films on DVD carried a special sticker indicating compliance to the Ontario Film Review Board guidelines on adult product.

The Theatres Act requires the film review board to review a film for sale or rent in Ontario, check for prohibited content such as sexual violence or minors engaged in sexual acts, just two criteria that would prevent the movie from being sold or rented in the province. Adult sex films must, by law, be properly stickered as evidence that they have been reviewed and do not contain scenes violating the guidelines.

From the risk perspective, the number of Theatres Act inspections was high in 2001 and 2002 because of the new stickering program and the need to educate adult video store owners about their obligations.

It was also important that the ministry deal with the high level of non-compliance that inspectors were observing at the time. Secondly, the low level of inspections related to complaints in the collection agency sector is indicative of the fact that the vast majority of complaints received by the consumer service bureau allege harassment. Staff has found that harassment is rarely observable through a field inspection. Instead, the registrar reviews every formal complaint, interviews the complainant, contacts the company for a response and, where there is evidence to support it, formal cautions, charges or other actions are taken. This involves the work of the registrar and the investigators, not the inspectors.

In fact, to deal with collection agencies, the ministry has since April 2001 issued 33 cautions, suspended four licences, revoked one licence altogether and laid 62 charges. Nine investigations are currently ongoing.

**1100**

Third, as I have mentioned, non-compliance in the adult video sector is rarely signalled by consumer complaints but rather discovered through field inspections and industry tipoffs.

To summarize: To restrict the analysis to the comparison of the ratio of complaints to inspections in adult video and the collection agency sectors misses the essential differences between the nature of the sectors and their consumers.

Notwithstanding that, the ministry has been very active in the areas mentioned by the auditor. We believe there is still more we can do. We support the recommendations and will continue to deploy our compliance resources in an appropriate manner.

Just for a minute to turn to some of the detailed suggestions of the auditor in regard to governance of the ministry's delegated authorities: As I mentioned earlier, the delegated authority model is an innovative and forward-looking way of involving consumers, government and industry to provide service and ensure compliance. Not only does it engage stakeholders, it improves public safety and consumer protection.

We are happy to see that the auditor believes the model is sound and that, as he says on page 106, "workable accountability framework in place to delegate regulatory functions to certain industries." Let me reiterate that the ministry's role in the partnership is to manage the governance of the authorities and hold them accountable for their results.

By establishing good governance structures and providing clear regulations and a thorough overhaul of the legislative frameworks, as we have done since 1996, the ministry sets up a situation for DAAs to succeed. We have found that they have embraced their role and take their responsibilities very seriously, administering the regulations which are in the best interests of their customers and, in turn, their own industries.

The ministry works closely with each and every one of the DAAs, and while there are governance models in place, we recognize that some may benefit from more documented and formal arrangements to reinforce the culture of co-operation that the ministry and DAAs have worked hard to foster.

Since the auditor's report was published, we have continued in our efforts to strengthen these arrangements and will continue to take advantage of this opportunity to improve them.

In particular, in August 2003 the ministry signed a letter of accountability with the Ontario new home warranty program. In addition, the Technical Standards and Safety Authority has invested \$5.5 million into new databases to track safety information, and both the TSSA and the Electrical Safety Authority have agreed to have the data in future state-of-safety reports reviewed by their external auditors to ensure the data reconcile to source documents identified by the authorities.

Other measures of transparency and accountability between the ministry and its DAAs, such as published business plans and annual reports, will of course continue.

In conclusion, I hope that I've made clear the breadth of work that my ministry does. As regulators of alcohol, gaming and horse racing, combined with registration, public service delivery and policy-setting for a number of important areas, the ministry is closely involved in public safety and consumer protection.

Through our consumer protection legislation and our involvement with DAAs, the ministry has found ways to obtain better results in a more responsible and responsive manner. By giving DAAs responsibility and power to regulate key industries, we are managing a process that allows regulations to adapt more quickly in a marketplace that moves faster than it ever has before.

At the same time, consumers benefit from the expertise of regulators with greater focus and knowledge while the government is able to set safety and consumer protection standards that the DAAs are obligated to uphold.

Employing a risk-based framework is consistent with the marketplace standards and services branch tradition of taking action that makes the most sense for the industry in question. This allows us to have the greatest effect in the market.

Awards from our peers are a sign to us that we are on the right track, but not that we have perfected our work. In fact, we are continuously looking for ways to improve our services and to be more effective.

Since the auditor's report we have made important strides, and we believe that this report is an important

tool that validates our direction in some areas and gives us reminders about places where more attention is needed. We view these as important steps that have been taken and that we will continue to take. I'm pleased to have had this opportunity to tell you about them and will now be happy to take any questions you might have for us. Thank you.

**The Chair:** Thank you very much, Deputy. I think Mario had the first question.

**Mr Mario Sergio (York West):** Not because I wanted to, but they insist that I take the first question.

**The Chair:** No. If you don't want the first question—

**Mr Sergio:** No, no; that's not what I said. I said that you say that.

First of all, congratulations, Ms Corke, on your appointment. It's wonderful.

**Ms Corke:** Thank you.

**Mr Sergio:** Welcome to all the staff from the ministry.

In the report there is one consistent area that I think is mentioned with respect to key data regarding investigations, inspections, enforcement practices and especially record-keeping deficiencies and stuff like that. I know the ministry has already taken some steps in all of those areas. Could you perhaps expand a bit more on some of those things?

**Ms Corke:** I think I'd like to ask the expert, here, my assistant deputy minister, Rob Dowler.

**Mr Sergio:** There was a reason for my asking the question.

**Ms Corke:** I think it's about the marketplace standards and services that you're asking.

**Mr Rob Dowler:** Thank you very much for the question. I think the ministry is generally quite sympathetic with the recommendation from the auditor. We do recognize the importance of keeping good data on our registrants and making sure that we're tracking on a risk basis the types of compliance activity that would command the inspectors' and investigators' attention. We also recognize that in an area like cemeteries, which is flagged in the auditor's report as an area that could use improved data—

**Mr David Zimmer (Willowdale):** Mr Chair, on a point of order: I'm having great difficulty listening to the answer. I think it's a disservice to have sidebar conversations. It's disrespectful of everybody in the committee. I can't follow the—

*Interjection.*

**Mr Zimmer:** It's just a few steps to the door. Just go outside and have your conversation there.

**Mr Dowler:** As I was indicating, the ministry does take the state of its data very seriously and we have taken steps to improve it. In the area of cemeteries in particular, that's the one area where the auditor certainly spent some time in his report, and we thank him for the recommendations.

We have launched a completeness project in the cemeteries regulations section and I'm pleased to report that as of today we have much more complete records on

cemetery registrants than we had before. In fact, just to verify that, we just ran a completeness test using our own internal audit resources to make sure that our registration records on the 5,000 cemeteries that exist in the province were complete. The internal auditor did report to us that as of today our records are virtually 100% complete based on the statistical sampling they did. So we think that's an improvement that was made and that's the direction the ministry wants to head in.

**Mr Sergio:** With respect to cemeteries, do you believe that according to the ministry's practices the auditor was generalizing when he mentioned the 5,000 cemeteries, given the fact that throughout rural Ontario we may have very small cemeteries, and that the number of those cemeteries indeed may be very small to provide the necessary information?

**Mr Dowler:** The audit report indicated that a significant proportion of the 5,000 cemeteries hadn't submitted their annual financial returns to the ministry. We would suggest that while we agree with the issue—we do need to take steps to make sure we get complete records submitted to us—we think the size of the problem is a little bit smaller than was identified by the auditor. We don't require one annual return from every one of the 5,000 cemeteries in the province; we actually require one return for each of the approximately 2,500 owners in the province. In a perfect world we wouldn't be looking for 5,000 returns; we would be looking for 2,500 returns.

In addition, the ministry has taken a risk management decision to basically exempt the very small, inactive cemeteries. In the cemeteries world, you have to take into account the fact that often you're dealing with a pioneer cemetery located in the back 40 acres of a farmer's field and the books and records are kept by a volunteer—it may be the farmer himself—and often it's very difficult to ask these people to submit detailed financial returns. We certainly do ask and we certainly do follow that up with a compliance letter when they don't submit. But in the event of non-submission from low-risk cemeteries, do we send an investigator to collect evidence for the purpose of laying a charge? We would look at that on a risk basis. If they don't have trust accounts, because they're 100 years old and they weren't required to have trust accounts, if they aren't active, if they aren't burying anybody, if they're small—say, less than 10 burials per year—we would act accordingly. We would use a softer touch than to go in and lay a charge or something of that nature.

On the other hand, for larger cemeteries, which may be commercial in nature, which are active, which have significant consumer monies in trust, if we didn't get an annual return we would certainly put that as a serious issue in terms of our risk management enforcement list and proceed accordingly.

1110

Again, to the question from the member, I would say that our commitment going forward is to take steps to improve the quality of cemeteries data. We've made important strides in that direction, and as of today we believe the registration records are virtually complete.

In terms of the annual returns, we would continue to make headway in that area. Our hope is that on a risk management basis we would follow up with cemeteries and deal with the active ones, the commercial ones, the ones that have trust accounts first.

**Mr Sergio:** Thank you, Mr Chairman. No more questions for now.

**The Chair:** Mr Dowler, Hansard requests that you just lower the microphone a bit closer to your voice for future questioning.

**Mr Dowler:** Sure.

**The Chair:** Could you provide to the committee in writing, perhaps later, a breakdown of the amount in the trust account? I raised this in our little briefing session before. My concern was that there would have been an overstatement of the problem by the auditor in terms of how many cemeteries have trust funds that are significant. I don't know whether you can provide that to the committee or not, but I would appreciate seeing it. In other words, how many have trust funds over \$10,000, \$50,000, \$100,000, \$1 million or whatever it is? In my view, the auditor's report doesn't present perhaps a fair situation with regard to risk of people disappearing with—

**Mr Dowler:** We can certainly follow up with detailed information for the Chair's question. I would say generally that your assumption is correct. The majority of cemeteries would be older in nature and therefore wouldn't be required under statute to have trust accounts. The trust account requirement came in in the later part of the 20th century. Many cemeteries, of course, predate that.

**Mrs Julia Munro (York North):** Thank you for being able to join us here this morning. I have two questions. The first one deals with the problem of the natural gas pipelines and the kinds of issues that we have seen in those areas. Certainly in the auditor's report he talks about—most of them—the damage done to underground pipes. In the material we were provided with it was outlined that timeliness was such an issue for people who are waiting for detailed information with regard to location. Obviously, this is one of multi-responsibility in terms of people who are involved in the actual digging and people who are supposed to be responding to more detailed information.

I think our job here is to see it from the point of view of the issue of public safety. So I wondered whether or not you could give us an idea, from the ministry's perspective, of what kinds of initiatives or leverage—you choose the term—you can see as valid mechanisms to increase the issue of public safety. At the end of the day, that's obviously what our biggest concern is.

**Ms Corke:** If I could just begin, and then I'll ask Rob to speak to that, and Mary, if she wishes.

We have been working, particularly since last May, when there was an unfortunate and very tragic accident, with the Ministry of Labour, the Technical Standards and Safety Authority and ourselves to look at how we might better enforce together what we already have and also

what gaps there might be. We've done a fair amount of work.

The Technical Standards and Safety Authority is very proactive in chairing the Ontario common ground alliance, which is a voluntary alliance of those regulators who have stuff underground. This is a sort of very inter-jurisdictional thing. Many organizations are responsible for regulating things under the ground. TSSA, the Ministry of Labour and ourselves don't have all of it.

I want to let you know that there's very active work afoot. I'll just turn it to Rob to give a little bit of detail on where that might be going.

**Mrs Munro:** I'm glad it's afoot.

**Ms Corke:** No pun intended.

**Mr Dowler:** In terms of the work that the TSSA has done in this area, they actually have taken steps to educate over 2,000 excavators in the last year, and they have plans to do an even higher number of educational efforts in the current year. The human factors behind excavation are a really important risk driver that does contribute to incidents. The TSSA has recognized that in their root cause analysis of incidents and in their analysis of complaints, and as a result they've taken steps to try to improve the education of people who work backhoes, work shovels and deal with the excavation process.

In addition to that, TSSA and the government, as well as the previous government, have recognized the importance of getting really good incident data to the authorities so that the authorities know and are able to identify the root causes of incidents. To better improve those data, the Technical Standards and Safety Act was brought into place with a provision that requires all operators to submit incident data as a matter of statutory obligation. As well, for the Electrical Safety Authority, a similar provision exists in the electrical safety code, which was brought in in 2002.

It's the obligation in regulation for each operator who experiences a major incident to report that to the responsible authority so that they have both an opportunity to respond if it's that type of an incident—a serious incident which perhaps would require an investigation—and the opportunity to simply look at the root cause of the incident and try to take responsible compliance action or educational action to deal with it.

**Mrs Munro:** If I could just ask further on that, it would seem to me that from the perspective of the person who is going to do the digging, you can provide those people obviously with further education on understanding the importance. Is there equal pressure on the part of the provider of whatever line it is that we're looking at to respond in a timely way for these people? It seems to me that you could be doing all the work on the side of the excavator and the person digging, but they've got to have the corresponding partnership on the other side.

**Mr Dowler:** Yes, there is a legislative requirement for all licensees under the TSSA to submit and locate information in the fuels and pipeline area on a timely basis. That is a statutory requirement.

**Mrs Munro:** My second area comes from the part of the report that deals with ONHWP. In his report, the auditor identifies two of the areas that receive the most complaints: one of course being that its services are biased in favour of the builder over the consumer, and the second one being the bias against small builders over big builders.

I realize that in the interval since the original audit was done, the ministry and the organization have signed a memorandum of understanding. But speaking from the perspective of a local member, I can tell you that those two points of complaint would stand very high, in my experience, with regard to individual homeowners, particularly I think the question of understanding what is the responsibility of ONHWP vis-à-vis the homeowner and understanding the limitations of ONHWP's mandate vis-à-vis the builder.

These are the two critical issues, in my view, and I wondered whether you could give us some specific information in an outline of how you have responded, I'm assuming in that memorandum of understanding, to the kinds of complaints that we would see in our communities.

**Ms Corke:** Once again, I'll start this one off. To address the—

*Interjections.*

**Mr Gilles Bisson (Timmins-James Bay):** Mr Chair, that's really throwing me off. It's not very nice of those people to—

**Ms Corke:** There are two things that we've been addressing—

*Interjections.*

**Mr Bisson:** Chair, they're persisting. Could you please stop them? It's really bothering me.

**The Chair:** Let's not carry this too far. Let's continue on.

**Mr Bisson:** Now you've made my point. Thank you.  
1120

**Ms Corke:** There are two activities that we've been undertaking at the governance and accountability level with ONHWP. We can address the specific questions about what ONHWP is doing to deal with bias, but let me talk for a minute about what the ministry is doing.

The two areas that we've been looking at are, first of all, trying to deal with more transparent reporting and complaints management and that kind of thing. So in the letter of accountability that we signed with ONHWP this summer, we do ask them for a lot more information, data and reports on their complaints handling, the investigation and enforcement work they do, that kind of thing, and regular quarterly reports.

The most important thing I think from the ministry's point of view is to try to make sure that the perception of bias in the way the board of directors works at ONHWP is addressed. We are in the process of negotiating with ONHWP, with OHBA, for ministers' representatives. On the other delegated administrative authorities, about 25% of the board membership is what we call public interest ministers' appointees. Some of those boards also have

other public interest appointees, but we have three or four ministers' appointees on those other boards. The ONHWP statute doesn't require us to do that with ONHWP, but we are negotiating that and there has been agreement that we will have ministers' appointees on the ONHWP board. That's one thing that we're trying to accomplish.

Further, we're trying to accomplish a different arrangement for the nominations process, which at the moment is completely controlled by the Ontario Home Builders' Association. I think it's important to remember that this is not a delegated authority like the others; it's not under the 1996 statute. It in fact was a voluntary program that was set up in 1996 by the house building sector and was then taken under statute and sort of formalized and codified. So there's a strong history of builder ownership and responsibility for this program.

Having said that, work is seriously underway now to try to mimic aspects of the other administrative authority frameworks, even though the statute doesn't say so, to try to get that kind of transparency on the numbers and to understand where the builder money is going, how much of it is being spent on consumer education, builder education, that kind of thing, how the compensation warranty program works and so on.

That's a general overview of how we're trying to address the perception of bias. Perhaps Rob or Mary would like to add specifically in terms of services to consumers and bias against small builders.

**Mr Dowler:** Sure.

**The Chair:** Deputy, I believe you said this organization came in in 1996. It was 1976.

**Ms Corke:** It was 1976. I'm sorry; I misspoke. Well, 1976 was the statute. In actual fact, as you know, Chair, it began with HUDAC before that.

**Mr Dowler:** With respect to the member's question about improved information for consumers, a number of things have come forward recently from the Ontario New Home Warranty Program which would assist your constituents in that area.

First of all, they have had for a number of years a builder rating system on their Web site, which has been very helpful in terms of transparency and giving consumers information when they're selecting a builder. There have, though, been some concerns raised about the actual process, the actual mathematics that go into the builder ratings. As a result, the New Home Warranty Program has responded and it provides much more comprehensive information now on builders in terms of the number of years they've been in business, the number of conciliations they've had, the number of chargeable conciliations they've had—much less of a rating and much more unvarnished peer information that consumers can use. It's on-line, it's available, word-searchable; quite simply, to select a builder that has a good track record.

In addition to that, the new home warranty program and actually the Ontario Home Builders' Association nomination committee have put a number of measures

forward which should improve consumer protection under that program. The first thing is they've put in place a customer safety standard, which provides legal time frames for consumers after which time they have an ability in law to go to the warranty program and basically exercise their warranty rights. So there are now clear legal time frames that have been put in place.

Additionally, there is a homeowner information package, which is now provided on possession to homeowners so that they understand their rights and the builders' obligations under the mandatory warranty program. That's a document that's prescribed and put out by the warranty program which has to be received and signed back by the consumer.

They've now doubled deposit protection for freehold homes, from \$20,000 to \$40,000, which is helpful to consumers, particularly in the Toronto market where house prices have gone up considerably and deposits have gone up considerably.

They've introduced a new consumer service centre, a new contact centre, so when consumers call they can hopefully get better response metrics over the phone, get better access to information and find out the status of their complaint that much quicker.

As I mentioned, the Ontario Home Builders' Association, which actually runs the nominations committee for the board of directors for ONHWP, have introduced a new, more transparent process. They've documented their process for board selection and have actually published that now, so if anyone wants to know the type of process they go through in selecting board members, that's now available in a transparent format.

I think some progress has been made to address the member's concerns, and we look forward to continued improvement in the future.

**The Chair:** Mr Bisson.

**Mr Bisson:** I have a number of things, but I'll just do part of it now.

On the cemeteries issue—only because it was what you started with—do you have any statistics or sense of where we're at today compared to, say, 10 or 15 years ago, when it comes to compliance, both making sure that trust fund deposits are made and that people have reported as per what's under the regulations? Are we any better off today than we were 10 years ago, I guess is the question.

**Ms Corke:** I think we'll ask Rob and then Vishnu Kangalee to address that.

**Mr Dowler:** As I mentioned, during the audit process the branch has put in place a completeness project with respect to cemeteries data. They have looked at two observations that the auditor drew to the branch's attention. The first one was with respect to the completeness of cemetery registration files, which is to make sure that for each of the 5,000 cemeteries we do have a record of registration on file. As I indicated, our internal audit testing would indicate that, as of today, to the member's question, we are virtually 100% complete in terms of that database. We think that is encouraging.

In terms of the annual return, which is the document that we would use to get a declaration as to the status of a cemetery's trust account, if they're required to have one—some do, some don't—we did send out letters in 2003 to every one of the 2,500 cemetery owners across the province asking them for their annual return. We then focused on the 1,359 large active cemeteries in the province. We received back 1,359 returns.

**Mr Bisson:** Say it again. I didn't get the last part: 13 of 1,500?

**Mr Dowler:** Sorry, 1,359 returns were received after mailing to 2,500 owners. We have sent out deficiency letters for those owners who either didn't respond or who did respond but where the information they submitted was—

**Mr Bisson:** That's not my question. That's interesting information, but my question is, if you took a snapshot of the industry, to make it fair, 15 years ago, when this audit was done and carried out, would we be any better off 15 years ago as far as compliance as to what it was at the time of this audit?

**Mr Dowler:** This is a little bit speculative, but I'll offer these thoughts and, Vishnu, you can amplify if you'd like. There were not as many cemeteries in the province that were required to have trust funds 15 years ago. The trust funds, for the member's benefit, are there to set aside a principal which pays for the care and maintenance of the cemetery. Cemeteries are a perpetual obligation. The trust fund obligations came into being midway into the 20th century, in the 1950s. So I would say, 10 or 15 years ago there weren't as many cemeteries that were required to have trust funds. I would conclude from that that probably cemetery maintenance wasn't as assured to consumers as it is today.

**Mr Bisson:** Let me ask the question to the auditor, then. I take it that the auditor had, in previous audits done—let's say 10 or 15 years ago—looked at that question. Do we have any data?

**Mr Jim McCarter:** This current audit was probably the first time that we actually had a good look at the cemetery issue. I don't have any information as to 10 or 15 years ago.

**Mr Bisson:** I just go back to the ministry and I ask the question: Do you feel that we're any better off, as time goes forward—not even forward. From the time this audit was done, with the snapshot that was taken by the ministry, are you feeling confident that there is no difference, significant difference, less difference, with regard to compliance on the trust fund issue? Is that becoming an issue all of a sudden? That's what I'm trying to figure out. Let's start with the trust fund first.

1130

**Mr Dowler:** In terms of the trust funds, I would suggest to the member that our information on trust funds in the last 12 months has been dramatically improved.

**Mr Bisson:** I hear you and I commend you for that, but it's not my question. My question is, was compliance on the trust fund 100% 15 years ago? You were doing that yourself, so you must have had the stats.

**Mr Dowler:** Right.

**Mr Bisson:** Was it 90%? How did it compare to what happened at the time of this audit?

**Mr Dowler:** Yes. I don't have that information.

**Mr Sergio:** Point of order, Mr Chair: I think Mr Dowler said that some 15 years ago, there weren't too many trust accounts, so it's very difficult.

**Mr Bisson:** There were trust accounts. They were set up in the 1950s. There were fewer cemeteries, is what he was saying.

**Mr Dowler:** We can take a look at our files and go back 15 years to see if we can provide you with a follow-up response, but I don't have that kind of—

**Mr Bisson:** I'm just trying to figure out if there's a trend with the industry. This is not the fault of your government, their government or my government. That's not what I'm after here. I'm just wondering, is there a trend within the industry, for whatever reason, where there seems to be less compliance when it comes to the trust fund issue? Are we seeing that as a trend? That's what I'm asking.

**Mr Dowler:** Yes, OK. In terms of our complaint statistics, which I would use as one indication of whether or not we have a compliance issue, my recollection is that there's not a dramatic increase in complaints on the cemeteries front. We certainly have had issues with respect to trust account defalcation, in which case we've laid charges and gone forward on that basis. But they tend to be sporadic and rare, I would say, compared to other fronts, where we have quite a significant magnitude of complaints.

**Mr Bisson:** Other fronts being the registration, you mean?

**Mr Dowler:** Other fronts would be non-cemeteries. They would be things like collection agencies, loan brokers—things that are also mentioned in the auditor's report.

**Mr Bisson:** I'm just asking the question because—I don't know if other members have run across the same thing; I do know that there have been complaints within my own constituency in regards to some of the care and maintenance of older cemeteries. These are cemeteries that were in operation 10 years ago. I'm just wondering, with tougher times economically, if the owners of cemeteries, either municipalities or private individuals, because of tougher economic times, are saying, "Well, I need that money to deal with today, never mind about tomorrow"? I'm just wondering if there's a trend developing.

**Mr Dowler:** One complaint we do hear about that may be the complaint the member's referring to is that the type of returns on existing trust accounts are not sufficient to keep up with maintenance bills that cemeteries are facing. That's been a function in many trusted environments because interest rates have fallen so dramatically. What would have been quite an adequate return on investment 10 years ago—a 10% interest rate—in today's low interest rate world can pose some issues for cemeteries.

**Mr Bisson:** Which brings me to my next question. I'm not an expert on cemeteries, and I hope to never be. I would rather look at them from this side, if you know what I mean. The complaint that I do get from municipalities and at least one private owner is that the cost of maintenance is going up. Fuel, labour and everything else is much more expensive. Nobody has come to me and said, "We've not deposited the money into our trust because of that," but I'm just wondering if that's what's happening. If that's the case, is there a need to review how much money is going into the trusts? I don't know if there's a formula, or how you do that. But is there a need to take a look at that? Because if there is legitimately an issue of cost for the operators, and the regulation or legislation that governs the trust fund is not adequate for providing future consideration of maintenance, is it time that we take a look at that? That's why I'm asking, is there a trend?

**Mr Dowler:** I think there is. We do hear about concerns from managers that maintenance costs are rising faster than the interest which is generated by trust accounts. That's an issue that we hear for all types of trusted environments right now.

Is it time to look at the amount that's set aside in trust? Well, with the new bereavement legislation, which was approved by the Legislature just before Christmas of last year, we will be looking at the treatment of things like capital gains, whether a capital gain can be treated as income which can be used by the cemetery for the purpose of maintaining its property. We will be looking at other issues of that nature. So that issue, I would say, is being examined.

**Mr Bisson:** Are you getting complaints from operators, owners—you talked about some of the complaints that you're getting from the operators—that in fact the current scheme is not adequate to deal with future consideration of maintenance?

**Mr Dowler:** I would say what I said earlier, which is that operators have expressed the concern that they're just not getting enough income from the types of investments they're allowed to purchase: GICs and things of that nature.

**Mr Bisson:** Is anybody calling for a change to the regime?

**Mr Dowler:** We've had a lot of interest in expanding the treatment of capital. That's been an issue and is currently being examined in the course of developing regulations under the new legislation. That could potentially assist some members who have portfolios that are generating capital gains they're currently not allowed to touch.

We've had some interest in the issue of how much is set aside for care and maintenance, but I wouldn't say it's at the top of the list. We just did large-scale consultations on the bereavement legislation the summer before last, leading up to the new legislation. I don't think the groups we spoke with raised it as one of their top five issues, but it is an issue that municipal cemeteries and some others have raised.

**Mr Bisson:** I would just wonder out loud to committee members, the Chair and the auditor if that is something we need to be concerned about at one point. I don't know if some mechanism through the parliamentary assistant could bring that back to the ministry. I just worry, because I know that municipal operators have raised it with me. We've had some complaints about the maintenance of cemeteries: people who were buried 15 years ago and the tumbleweed is growing. Maybe we need to look at that, and I would just signal that.

Just a last question on cemeteries, and then we can deal with other issues in another round. It's a little interesting, maybe as a result of that issue, that about two or three years ago—I've been a member here for 14 years—for the first time I started to receive the odd complaint not just about the maintenance of cemeteries but actually about burials. Are you seeing an increase in the amount of complaints you're getting in regard to families complaining about people being buried in the wrong plots, that kind of stuff? I'm getting those, and I never used to get them before. Is something different happening? Maybe the guy who's burying them doesn't know how to read a road map.

I'm just saying it's kind of odd. Who has ever gotten a complaint from their constituents? It's not the kind of complaint you get at your constituency office, but in the last year I've had two complaints of people buried in the wrong plot, where family members go back after trying to find the body and it's not where it's supposed to be; another one I don't even want to get into, because it was the most bizarre thing I've ever seen.

*Interjection.*

**Mr Bisson:** It's too long; maybe I'll tell you later. It had to do with the body disappearing.

All of a sudden in the last couple of years there have been complaints, and I'm just wondering if that is a trend. We did find the body, by the way, and it is buried now.

**Mr Dowler:** I'm glad to hear that.

**Mr Sergio:** Would this be part of the funeral services provision?

**Mr Bisson:** No, it's the actual burial.

**Mr Sergio:** I know, but I think this is part of the services being provided by the funeral home.

**Mr Dowler:** I think the member is referring to things related to the process of interment, which would be more on the Cemeteries Act side than on the Funeral Directors and Establishments Act side.

To the member's question: We certainly do get some complaints about cemeteries of the type he's mentioned in terms of incorrect burials or survey issues on sites and that kind of thing. Is it an increasing trend? I don't think it's something the staff would indicate is a dramatically increasing trend. As the deputy mentioned, we get 60,000 consumer complaints a year on everything ranging from motor vehicle repairs to roof renovations to cemeteries to theatres to collection agencies. Historically, cemeteries would not be an area that would make our top 10 list.

**Mr Bisson:** They certainly don't make mine.

**Mr Dowler:** OK. But when issues do come up, they are significant. Certainly when someone's relative isn't interred properly, that's an issue that gets people very emotional and that the registrar for cemeteries takes very seriously. If any member here today has complaints about cemeteries from constituents, please contact us and we'll put you in touch with the registrar. He has lots of authority to pursue it under the act.

**The Chair:** May I just ask a clarifying question along Mr Bisson's line? In terms of the responsibility of the cemetery to collect from someone who purchases a plot, is there any requirement for what they must charge in order to ensure there is a maintenance fund that would result out of that capital that would go in perpetuity?

**Mr Dowler:** Yes. For cemeteries that sell interment rights today, the current act does require that 20% of the purchase price be set aside and put in trust as a care and maintenance deposit. That's a provision that didn't exist prior to the 1950s.

1140

**The Chair:** That says 20%, but it doesn't say 20% of what. In other words, if you're buying a plot out in rural Ontario, the plot may sell for as little as a couple of hundred dollars. Twenty per cent of \$200 is \$40, which is not going to care for the land. It's not a realistic number. Is there no requirement that they collect any certain amount to ensure the ability to maintain it in perpetuity?

**Mr Dowler:** Just the number I indicated.

**The Chair:** Twenty per cent.

**Mr Dowler:** That's correct. And that has to be trusted. Sorry, I'm just being corrected by staff, and it's 40%; my apologies for that. Really, that is the statutory requirement. It may be less than that in some cemeteries. Many religious cemeteries, for example, will waive that requirement, and much of their maintenance is done on a volunteer basis. Church members will cut the grass and do things of that nature.

**The Chair:** So they can waive it? In essence, does the risk fall on the local municipality, which must pick up an abandoned cemetery and care for it?

**Mr Dowler:** Only if the cemetery is abandoned. The municipality is there as the last resort. In the case of a church ever saying, "Sorry, we can't take care of our members any more," and walking away, the default would then go to the municipality, which serves as the statutory backstop, if you will.

**The Chair:** I understand as well from talking to some of my local cemeteries that about 40% or 45% of remains are cremated rather than buried. Does any of the money they might be involved with, in terms of cremation, go toward perpetual care?

**Mr Dowler:** There is a \$150 amount that goes with cremains, as they're called—cremated remains. The maintenance expenses that are associated with cremated remains tend to be somewhat lower, because they occupy less real estate. They're typically housed in columbaria or niches, which are typically much more modest than a full burial would be.

**The Chair:** But some of the small cemeteries in the area I represent have been struggling, because they're not selling as many plots as they used to because of this change in consumer choice.

Ms Sandals, and then Mr Zimmer.

**Mrs Liz Sandals (Guelph-Wellington):** I'll just quickly follow up on cemeteries and then move on to something else.

Given that I think we're all agreed that there isn't a whole lot of interest in hassling the 100-year-old graveyard attached to a little country church but there are issues in making sure bigger cemeteries are properly maintained, are you within the ministry satisfied that you have the correct criteria for the ones you consider to be at higher risk and that you need to follow up on? For example, you could easily have a fairly large cemetery that is not doing many active burials because they've sold all the plots, so you get a few burials in remaining spots in family plots. So, on a volume basis they don't clear the hurdle, but they may in fact have quite large trust accounts to maintain. Are those people getting reviewed actively by you?

**Mr Dowler:** I think the member raises a good point. As I mentioned, we're in the process of developing more enhanced risk measures to look at which cemetery files would get first review by the enforcement staff. The type of characteristics you're mentioning would be exactly the things staff will be reviewing to make sure we're putting first things first from a public-risk perspective.

I would say, as well, that these numbers are never cut in stone. As we get complaints over time, we use that complaint information to further calibrate where the risk is. So, if we find we're focusing our efforts proactively on large cemeteries that are active, but we're getting a lot of complaints on large inactive cemeteries—to your comment—then we would obviously change our ranking system and notch up those we're getting complaints on.

**Mrs Sandals:** It seems to me that the thing we need to get out of this whole audit discussion is, which ones are high risk and how do we aggressively pursue the ones that are actually high risk?

If I can go on to another area, when we look at the delegated authorities, just reading through this as a novice, the thing that struck me as quite odd was that the ministry seemed to have limited ability to say to a delegated authority: "We want you to produce this data. We want you to be accountable in this way." We have the example that the auditor has pointed out of the TSSA, where the data seems to magically be revised from year to year and, depending on which way they are revising the data, the trend line—things are getting worse, things are getting better—goes all over the place while they play with the numbers. Then we go on to the home warranty program and they just seem to have stopped collecting the data. The ministry doesn't seem to have any authority to lay out their expectations.

My question is around the whole legislative framework under which these delegated authorities are operating. Is there a legislative framework that is flawed or

too weak to actually allow the accountability measurements from the ministry to be in place?

**Ms Corke:** In terms of the new home warranty program, we don't actually have in the statute the ability to require information. We've patched that up now with an accountability letter where we've asked specifically for regular data and regular information on a quarterly basis.

**Mrs Sandals:** But you're still at the mercy of the agency in essence.

**Ms Corke:** Yes.

**Mrs Sandals:** You don't have the ability to demand.

**Ms Corke:** We don't have the ability to demand on that particular one because it's a very old statute. It's not a modern governance and accountability framework, so we've tried to mimic that, as I've said before. In terms of the Technical Standards and Safety Authority, though, and the other ones, we have every right to ask for whatever it is that we would like to have, that we need for governance purposes. In actual fact, the story of the Technical Standards and Safety Authority data piece that you are referring to is a bit more complicated than it seems. The ministry has very regular reporting from the TSSA. Also, as I've said before, we are part of the governance structure in the sense that Mary Shenstone is our board member there and is a member of the audit committee, so is fully aware all the time of all of the data.

What actually happened with the Technical Standards and Safety Authority, in very broad terms, is sort of a series of comedies of errors, if you like. There was some clerical error; there were some data revisions because the TSSA has invested in what they call a root-causes analysis. When then inherited data from us in 1996, it was an old, clunky system called Index and it didn't really disaggregate very well very much of importance. So what the TSSA has done over the last seven years is to invest heavily in disaggregating this data into serious and non-serious and other kinds of incidents like near-misses. They've reached out to their industries and double-checked and reclassified some of the data in order to get at root causes. What I'd like to say is, when the ministry was responsible for what was then the technical standards safety division, we were very much, I would say, gatekeeper regulators. Our role was pretty much limited to how well we enforced the letter of the law and the regulations.

TSSA has taken on themselves not only that role, which they do very well, but also a further role to look at actual safety outcomes and what the causes are; so public safety in a broader way. In the process of doing that they have rejigged their data base and reclassified and done some very solid analysis. In the process of that they've mostly been extremely transparent. When you look at those reports from year to year and quarter to quarter, most of the time they've acknowledged the variances, why things have changed. Once or twice in the period of time there were clerical errors in doing that, which we subsequently sorted out.

The broad answer to your question is we can ask the TSSA and the other 1996 statute-delegated authorities for

anything that we like at any time, and we do. We have regular reporting, regular frameworks and regular meetings to go through it. Some stuff slipped through and we learned a lot from that. It will not happen again. Things have been put in place now where those kinds of clerical errors can't be made. There will be third-party audits of the data that TSSA receives when they report it to make sure that it's reported correctly. We have compliance protocols we've put in place with TSSA so that we can understand what kind of incidents require what kind of compliance activity. We have a performance score card that we're putting in place to make sure that we at staff level always understand if anything has changed and why it's changed and what the trends are.

1150

Just before I finish this—because it's a pet peeve—I'd like to say that even if the historical data were being looked at again and disaggregated and sorted and worked out for analytical purposes, never at any time did the ministry wait for historical data or historical trends in order to plug a safety gap. So all the time while this stuff is happening and the data work is being done and the \$5-million project is being done, if ever there was a serious safety incident out there, we were right on it with the TSSA, taking immediate action.

An example of that would be the tragic August 1998 bungee-jumping accident. We didn't wait till the next year to see if bungee-jumping accidents had doubled or tripled. We took immediate action with the TSSA right there and then. That's the way that it's been. I guess the problem has been that we were not able to satisfy the Provincial Auditor that we understood some of those variances in a public and transparent way. We've learned a lot from that.

**Mrs Sandals:** But you're satisfied now that the data will be comparable from year to year and that those data problems that have been underlying that are sorted out, and as we go forward, you can get what you need and it will be comparable?

**Ms Corke:** Yes, I'm satisfied that the new system that the TSSA has put in place now with the disaggregated and cleansed data and all of the rest of it will give us what we need on a regular basis. If it doesn't, we will be monitoring it regularly and we will go back and ask for what we need in addition.

**Mrs Sandals:** Thank you.

**Ms Corke:** Does anybody else need to add to that?

**Mr Dowler:** Maybe just two quick points. TSSA and ESA do collect data from a wide variety of sources. It's not just their own internal investigation files that give rise to the state-of-safety reports. They collect data from WSIB, the Ministry of Labour, the Ministry of the Environment, utility records. They're trying to get not just the hard incident, the major incident information which comes to their attention as a matter of statute; they're also trying to get at near misses, things of that nature which allow them to better understand the risk, the root causes and to set up a better compliance program.

Given the breadth of these data, there will be revisions to data series over time, as there have been in the past. I think what the ministry will be looking for in the future is clear documentation where a revision is made, a footnote indicating that there has been a revision to historic series and the reason for that revision, whether it's a change in definition or better data capture, but some explanation as to why the data are moving around.

The second point—and this just builds on the deputy's comment—is that both TSSA and the Electrical Safety Authority have given an undertaking that their external auditors, KPMG and Ernst and Young respectively, will review the state of safety reports, not on a full CICA audit basis—because these are not financial documents—but on the basis to ensure that the data that are presented are reconcilable back to the sourced information—and I mentioned that it comes from a breadth of sources—that basically, what's published lines up with the data that are being sourced. That should go a long way to making sure that the information that's published is as correct and as reliable—to use the auditor's term—as possible.

**Mrs Sandals:** Just to ensure I'm absolutely clear, when you say with the exception of the home warranty program, that you can ask for whatever data you want, what you're saying is that when you ask, the legislation is framed in such a way that the delegated authority will provide the data you're asking for.

**Mr Dowler:** Certainly with respect to TSSA, we have a statutory ability to obtain information. With respect to the Ontario new home warranty plan act, as it's known, I can't recall if we have a statutory authority to require books and records and reports, but we certainly have the letter of accountability and contract with them, and they've been more than forthcoming with information as we've requested it. So it hasn't been an issue, now that we've signed the accountability letter as of last summer with the Ontario New Home Warranty Program.

**Ms Corke:** I have the statue in front of me, the government's accountability statute, and in fact we are permitted to ask for a report from the delegated administrative authority. "The report shall be in a form acceptable to the minister and shall provide the particulars that the minister requires."

**Mrs Sandals:** So that's a shell, and they must.

**Ms Corke:** Yes.

**Mrs Sandals:** OK.

**Ms Corke:** Now, I just need to be a little bit clear. The Board of Funeral Services is the other one that is not under that statute. So we don't have the same ability to oblige the Board of Funeral Services for information.

**Mrs Sandals:** So the funeral services and the home warranty don't have the shell—

**Ms Corke:** There's two of them: mark 1, I call them, and these other ones are mark 2.

**The Chair:** Members of the committee should know that the chief executive officer of TSSA, Margaret Kelch, is with us. She was a former deputy in this government some time ago.

**Mr Zimmer:** My question is about the allocation of inspection resources, drawn from a comment you made

in your opening remarks, Deputy Minister, regarding video inspections and that there were so few inspections vis-à-vis so many complaints about collection agencies. You said most of those complaints about collection agencies are about harassment on the telephone and there's no way to follow up on that, so fair comment.

On page 99 of the Provincial Auditor's report, we see there were 4,000 complaints about collection agencies, and you've explained why it's hard to follow up on those complaints, because they are essentially about telephone call decorum. But there were also 2,100 complaints about credit reporting agencies. That's information on someone's file, which can be followed up on. There were 1,900 complaints about motor vehicle repairs; that can be followed up on. There were 744 complaints about loan brokers, and of course only eight complaints about video retailers.

The Provincial Auditor says, in the first sentence at the top of page 99, "Our review revealed that the ministry did not deploy its inspection resources based either on any formal assessment of risk to the public and consumers, or on the number of complaints received for each of the industries it monitors."

The Provincial Auditor goes on to say, in the last paragraph on page 99, "In 2001, the ministry agreed with recommendations made by an outside consultant to devote at least half of its inspection efforts to responding to complaints and use the remaining half for proactive inspections, allocating inspection resources equally between collection agencies, cemeteries, and theatres. Nevertheless, at the completion of our audit in 2003, most of the inspection resources were still devoted to inspecting video retailers."

My question is, what happened to that 2001 commitment?

**Ms Corke:** I am going to ask Rob to take this one. But just before we begin, I'd like to draw attention to the fact that not all of that legislation has inspection powers. Other kinds of compliance and enforcement activities do go on, for instance, in those other kinds of statutes, like the loan brokers; there's no inspection. But I realize that's not your entire point, so I will ask Rob—

**Mr Zimmer:** I appreciate that. What happened to the 2001 commitment?

**Mr Dowler:** To answer your question directly in terms of the 2001 commitment, the ministry did do a risk management study. We did develop a framework in conjunction with Alp and Associates, a recognized risk management consultant, and they suggested an allocation of field inspection resources along the lines the member indicated.

Why didn't we implement that immediately? The answer to that is that for field inspections, we have found that with the new stickering requirements introduced in September 2000 dealing with adult video stores, we have still seen a fair number of compliance issues in that sector. The inspectors are still seeing product which is unstickered and which may violate the board's guidelines. It may contain material that is explicit or that in-

volves minors or violence or things not permitted under Ontario law. So on that basis, for the three people who do field inspections in the ministry's branch, 95% of them in 2001-02, as the auditor pointed out, were focusing on the theatres area.

**1200**

But the situation today is that we are completely current with the risk management framework that was developed. As the member mentioned, the consultant recommended that we divide our field inspections one third to theatres, one third to debt recovery and one third to cemeteries. Theatres, as of today, stand at about 32% of our field inspection resources.

The other point the deputy made in her opening remarks was that we respond to every complaint we get. Staff choose what they consider to be the most effective response in their kit bag of regulatory tools.

The member indicated with respect to collection agencies that about 86% of the complaints we get are alleging harassment of debtors. Staff have found historically that sending an inspector out to a call centre that is a collection agency to try to observe harassment as it's occurring in the field is not a very effective response. What we do instead is commission an investigation. Investigations, in our database, are separate from inspections, and that's supported by recent court precedent. Our investigator, who is a provincial offences officer and a special constable, goes out and examines the nature of the complaint made. The investigator interviews the complainant bringing the information to the ministry, usually over the phone. Usually the business is contacted to get their side of the story.

One of the first things in a harassment case that the investigator would look for is corroborating evidence that would withstand scrutiny either at tribunal or in court. So if there is taped information—some consumers do come to us; they have their answering machine and they may press "Record." In fact, that's a tip we always give consumers, that if they feel they are being harassed, just press "Record" on their answering machine and make a tape. That's hard evidence that can be let in at tribunal or in court for the purpose of sustaining a charge or an administrative action against a collector or a collection agent.

On the collection agent front we have issued 19 cautions to collectors as a result, not of our field inspection activity but of our investigative activity.

**Mr Zimmer:** With respect, I appreciate that those 4,000 complaints about what I call telephone decorum are pretty hard to investigate, but there were 2,156 complaints about credit reporting agencies. That has to do with misinformation on the file, and that's an objective record. You can go and get the file and open it up and look at the file and see what's there and ask the complainant, "Is that information right or wrong?" I would argue that misinformation on your credit file is a very, very serious matter for a citizen and yet, of those 2,100 complaints, there was one inspection.

Motor vehicle repairs: 1,939 people complained about repair problems to their car. Again, there's an objective

thing to look at: Look at the car; look at the repair bill. Six inspections.

Loan brokers: 744 complaints from people who were borrowing money or involved with loan brokers and had some problem with the loan broker. There are serious consequences for people's money that they are trying to borrow or pay back, and yet zero inspections.

On this video thing, there were 1,599 inspections. Now, tell me what this sticker thing is all about, because I can't visualize it in my mind. But surely mailing these out to the video companies and saying, "That's the sticker for information you're supposed to put on the video. Make sure it's on, because we're going to be randomly inspecting you," would have brought them to heel. I don't understand why the ministry's risk assessment of the videos seemed to be so much greater than the harm that's done through misinformation on a credit file, which hurts your credit record; through vehicle repairs, and God knows how many people are out there victimized by these repair shop places; and then loan brokers, all the, for lack of a better word, loan-shark-type places that are operating, and yet we do zero inspections.

How are you assessing who to protect, and why this obsessive focus on the video things where you get eight complaints? I don't understand this.

**Mr Dowler:** As I mentioned previously, the amount of effort that we expend today on adult video stores has gone down to about 32% of our total inspections, and that's where the risk management experts said we should be.

Why do we do that? Well, I guess the statute does put a duty on us to make sure that product which isn't approved by the Ontario Film Review Board isn't in distribution in retail stores in Ontario. In the adult world, where the sticker is required—the sticker is only required in what would be called X-rated video stores, and in that world, we have had issues with respect to non-compliance. As a result, the three people who do field inspections for the ministry have tended to focus their efforts in that area. Today it's down around 32%. That's where we think it should be.

**Mr Zimmer:** But in regard—

**Mr Dowler:** If I could just finish, because you had another question in there that I want to address.

In regard to the other areas you mentioned, it's quite correct that we do very few field inspections under the Loan Brokers Act and we do receive a significant number of complaints against loan brokers. A loan broker in Ontario, as defined under that piece of legislation, is typically a telemarketing boiler room operating on an illicit basis. The act is basically a prohibitory statute that says anyone who takes an advance fee for the purpose of arranging a loan before the loan principal is delivered is guilty of an offence. As many members in the room will have seen, Ontario has taken a number of knocks internationally for the number of criminal telemarketing boiler rooms operating in Toronto. They're phoning senior citizens and telling them they may have won a prize or telling them, if they've had credit problems

arranging a loan, that the boiler room will organize the loan and all they need is an upfront fee of \$1,200 for insurance or for processing or something of that nature.

With the Loan Brokers Act, we don't do field inspections because our finding is that these criminal operations will disappear as soon as an inspector shows up. As the deputy mentioned, there's no inspection authority in that act. It's a simple prohibitory statute, which has been quite effective. When we do get complaints, we move directly to investigations and collect evidence for the purpose of laying a charge. We've laid over 1,500 charges since the act was brought into place in 1994-95. Given the nature of this complaint and its increasingly cross-border nature, we also have engaged in a strategic partnership with three levels of government law enforcement in Ontario: the federal government, through the Competition Bureau, the Toronto police service, ourselves and the OPP's Project Phonebusters. We also have an MOU with the US Federal Trade Commission and the US Postal Inspection Service. Under that strategic partnership, we've returned over US\$1 million to consumer victims. We've closed down 33 illegal, illicit criminal telemarketing boiler rooms in Toronto. As the deputy mentioned, it's won three international awards for the work the ministry has done.

So it's quite true that we do no field inspections in that area. I don't know that staff would ever recommend to the committee that we start doing field inspections in that area. As soon as an inspector shows up, the room would shut down and move.

**Mr Zimmer:** Well, that's the greatest protection of all. If you've got a shoddy person out there and all you have to do is send around an inspector and, as you say in your own words, that has the effect of shutting them down, what a marvellous way to protect the consumer.

**Mr Dowler:** Perhaps I misspoke. I didn't mean necessarily shutting them down permanently—

**Mr Zimmer:** That's what you said.

**Mr Dowler:** I may have misspoke. I meant it would cause them to relocate.

**Mr Zimmer:** All right. Well, they relocate out of Ontario. What a better—

**Mr Dowler:** Usually our experience is that they move up the street and reopen.

To your point, we do make a visit to these types of operations. We don't tend to visit with inspectors. We visit with investigators and with the Toronto police service. In fact, lately we've been using the tactical unit to make visits to these types of operations because of the amount of weaponry and other material that's held on site.

I think we're doing what you're asking. We are making a visit to the premises. We are visiting with investigators, police officers, as opposed to making a field inspection for the purpose of giving them a compliance letter or something of that nature.

**Mr Zimmer:** Just to wrap up, the last—

**The Chair:** Mr Zimmer, we're late adjourning for lunch. We want to start at 1 o'clock again. Do you want to continue after lunch?

**Mr Zimmer:** No. I've made the point. Just let me note that the ministry response to the 2003 report is that they're going to commit to ensuring that inspecting resources are appropriately deployed, so I'm assuming that next year and in 2005 and 2006, we won't have to ask the same question about why two or three years went by without picking up on the commitment.

**Mr Dowler:** That is our commitment, as published in the auditor's report. We agree with the risk management finding.

**The Chair:** Thank you very much. We'll reconvene at 1 o'clock. I have Ms Mitchell next.

*The committee recessed from 1209 to 1307.*

**The Chair:** Ms Mitchell, I believe you have some questions.

**Mrs Carol Mitchell (Huron-Bruce):** I do, and my question is with regard to the marketplace standards and services, your outcomes. The charges laid were 533 in 2002, and the convictions were down sizably from 2000-01. I would like to know why.

I certainly understand what you use as indicators and that type of thing, but when I look at the outcomes, it doesn't support what you used as the answers to the previous questions, as you used for the indicators. So maybe once you clarify that for me, then I will understand.

**Mr Dowler:** The charges and convictions numbers do move around a fair bit on an annual basis. It depends largely on the nature of complaints we're getting and the nature of the actions we're bringing to court. So if we're doing a lot of work under the Loan Brokers Act, we would tend to lay a large number of charges, as opposed to going forward with, say, administrative actions. An administrative action would be something the registrar would do, like a suspension or a revocation or a caution letter. So if we're getting a lot of complaint volume under, say, the Loan Brokers Act, you would tend to see a lot of charges and, therefore, a lot of convictions in that year.

As I mentioned, under the Loan Brokers Act, we've laid 1,500 charges—approximately 1,500 convictions. The years when we did that activity would show us being very busy in court. But in addition to going to court, we also go to tribunal. We go to the licence appeals tribunal with registrars' actions: suspensions, revocations, things of that nature. So if we're seeing a lot of complaints under the licensing statutes, you would tend to see fewer charges, fewer convictions, but you would tend to see more registrars' actions: suspensions, revocations, caution letters, things of that nature.

As an outcome measure, I'm not sure charges and convictions on an annual basis tell you that much. The numbers do move around quite a bit.

1310

**Mrs Mitchell:** This is quite a bit of movement.

**Mr Dowler:** Yes, and we do see that typically in a year—maybe this will help—the branch is able to work anywhere from 120 to 180 cases, all the way from complaint through investigation through to prosecution.

Associated with any one of those cases, you may see one charge or two charges, or in some cases you may see 40 counts under the Business Practices Act. It depends on the nature of the case and the nature of what we're investigating. Again, it's a difficult measure to really draw performance conclusions from, because it does move around a fair bit.

Having said that, we look at it as you're looking at it now, and we try to make sure that we're seeing—first of all, we look at making sure that where we do commission an investigation, we are seeing results in court that send a deterrent effect to the people we're dealing with. That's a long way of saying we don't like to lose in court. We look at those numbers for the purpose of measuring the effectiveness of our investigations activities.

**Mrs Mitchell:** The charges laid were also increased sizably from the previous year. Then when I go to convictions, it's down substantially. I guess what I'm looking for is some assurance that there will be some type of checks and balances to ensure that what you're bringing forward as concerns or charges are in fact going to reach convictions, or what are you doing then?

**Mr Dowler:** Right. We would agree with that comment, and that's certainly a direction that we would want to move in.

**Mrs Mitchell:** Because it certainly signifies to me a concern. I don't have the past 10 years, but if I even had the past five years, that is quite a deviation in the norm.

**Mr Dowler:** Yes. You'd want to be a little careful looking at the data that you're referring to, because the convictions that you see are actually related to the previous year's prosecutions and investigations. You won't see a one-to-one match. If the previous year was focused mostly on registrars' activity, then in the subsequent year you won't see a lot of convictions. You'll see a lot of work at LAT, a lot of suspensions, a lot of cautions, things of that nature. One is kind of a lag function of the other. It's difficult to just look at the raw numbers year over year.

**Mrs Mitchell:** Those are the indicators that I have, and it is the outcome that we work on.

**Mr Dowler:** Yes.

**Mrs Mitchell:** So I just raise it as a red flag.

**Mr Dowler:** OK.

**Mr Bill Mauro (Thunder Bay-Atikokan):** Ms Corke, just a couple of questions I'd like to go back to—some of the information previously given—before I ask my questions. About the administrative agreements that either are in place or are not in place, you mentioned that there's an accountability letter: "We can ask for anything we want." Is that accurate? I guess what I'm getting at is, why wouldn't we just legislate what we want so that they have to give it to us, instead of us going back and having to ask for it?

**Ms Corke:** Well, one could.

**Mr Mauro:** We could, but we have not yet.

**Ms Corke:** We have not yet on the new home warranty program, which is where I said we had the accountability letter.

**Mr Mauro:** OK. What about TSSA?

**Ms Corke:** We have in the statute the ability to ask for anything we want, and so with the other ones—

**Mr Mauro:** But it's not already legislated for them to have to provide us a quantifiable list of—

**Ms Corke:** No, but in the administrative agreement there's a statute which says we can ask for anything we want. Then in the administrative agreement, which is the contract we have between us, it sets out the kinds of information that we want to have from them.

**Mr Mauro:** All right. Just one quick one on the cemeteries, before I go forward then. There was an indication earlier that numbers in the auditor's report were somewhat misleading, and that we should only be concerned about those cemeteries that weren't following the filing requirements and the trust fund information that were of a sizable number. I guess it concerns me a little bit that maybe we're not as concerned about the smaller ones, because if they fail, their ability to support those, or the municipality's ability, would be proportional. They're probably smaller as well. So while it might be a small amount of money, it would be significant for the municipality having to take over the enterprise. I'd be interested in your comments on that.

**Mr Dowler:** I don't think I suggested that we weren't interested in the small cemeteries. I think my comments were more directed to the enforcement area.

**Mr Mauro:** It wasn't your comment. It was somebody else's comment.

**Mr Dowler:** OK. I think our thought is that any time we get a complaint about any cemetery, in fact any time we get a complaint about anything, we review the complaint, we look at the matter that's being brought to our attention and we take the appropriate action. Small cemeteries, if we get complaints that maybe they're not being properly maintained or the types of things that Mr Bisson was referring to earlier, we would take a look at that and take the appropriate action necessary.

**Mr Mauro:** There's reference in the material about one or two or three that had not filed for seven or eight years consecutively. Was there an explanation for that?

**Mr Dowler:** Yes. I haven't actually seen the report. I have asked staff to generate a report that tries to track down which cemeteries the auditor was referring to. I haven't had a chance to review the actual report that has come forward yet, but as part of the cemetery completeness project that I referred to, we will be looking at the entire database for cemeteries and making sure that we have as complete a set of records as is reasonably possible.

**Mr Mauro:** How would you characterize the effectiveness of the ministry in retaining overall responsibility for the results of the delegated authorities?

**Mr Dowler:** I think that generally the experience with delegation has been found to be quite positive. There was an independent evaluation done a few years ago by the PSTG group, an independent consultant. Their findings were that, generally, the number of inspections and investigations and enforcement activities that have

occurred after delegation have been quite a bit higher than existed prior to delegation. I would think, from a public interest perspective, that's one of the first things you would look for, a sense that the delegated authorities are being as diligent or more diligent on the enforcement front as the ministry was prior to delegation. That would be the first marker that we would point to as an indication that things are going well.

In terms of the ministry's role in an oversight capacity, which I think is really what you were directing your question toward, I would say it's obviously a continuous improvement game that we're in. We're still fairly new at the business of administering delegated authorities. I think the staff have done an excellent job so far. I think you can always make a good thing better, though. I think the auditor has given us some good directions to move in, in terms of looking at outcome measures, making sure that we have reliable and good quality data from the delegated authorities. I think the commitment we have from the two safety authorities to have their external auditors take a look at the data and reconcile it back to its source material is a good one. It'll move the oversight capacity of the ministry in a positive direction. I would tend to see the experience as having been positive.

**Mr Mauro:** The report speaks to under-reporting on fatalities in two areas. The reason I asked the first question leads me to this one: If the ministry is to maintain an oversight function around the protection of safety for consumers and the public, yet the ministry doesn't know about four fatalities in a boilers and pressure vehicles section and five in the fuel section, it gets back to the question that I first asked Ms Corke about the agreements that exist: Why should we have to go back and ask for information? Why should we not legislate that they have to give us that information and find out about it after the fact? I'm a little bit suspect about our ability to provide proper oversight if we don't know that people are actually dying. I'm wondering if somebody could address that for me.

**Mr Dowler:** I think you raise a good point. I think we've indicated that steps have been taken to improve the quality of that data so that it will be reviewed by an external auditor. If data doesn't reconcile back to the original source documents, that will be something that KPMG and Ernst & Young would refer, as an independent body, to the board of directors of the delegated authorities. We all sit on the boards of directors so we, the ministry, would—

**Mr Mauro:** Or would it be better, rather than requiring an external auditor, that we just have it in writing that that's the kind of information that we expect them to provide?

**Mr Dowler:** Right. We do have that now, and we will be expanding that in the future.

**Mr Mauro:** That exists, that they are required to provide that information?

**Mr Dowler:** Right now, under the Safety and Consumer Statutes Administration Act, there is the authority for the ministry to require production of any report which is of interest to the minister.

**Mr Mauro:** There is the requirement for them to provide the report?

**Mr Dowler:** And, in addition to that, we have a quarterly report card which is generated by the delegated administrative authority. It looks at a series of measures for each of the authorities. I think the auditor has reviewed that material and has made some suggestions for improving the quality of measures that we've been looking at.

**Mr Mauro:** So if I could just simplify it a little bit, if there's a fatality now in one of these sectors, is it a requirement of that particular DAA that they have to tell you and the ministry that there was a death?

**Mr Dowler:** Yes, with respect to TSSA.

**Mr Mauro:** With TSSA. How about the other DAAs? Some yes, some no?

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**Ms Corke:** If I could just interject for a second, in actual fact, at the moment that is occurring there is a relay of information. So the reporting is one thing. We have to be more vigilant. There were errors. There was a clerical error, some other kinds of errors in that data report. But if a death or a serious injury occurs, I would know, personally, within half an hour, and the ministry would know—

**Mr Mauro:** How? There's a mechanism that requires them to tell you?

**Ms Corke:** There's a mechanism that requires them to tell me within half an hour. In fact, if it happens at 2 o'clock in the morning, I always know. If it's not me, then I've delegated it to somebody else in the ministry. So there is no possibility that a serious injury or a death could occur without my knowing.

**Mr Mauro:** So this under-reporting of fatalities then is—

**Ms Corke:** The issue here is that the board of directors knew, the representative of the government on the board of directors knew and I would have known. The issue is around that data project we were talking about where there were clerical errors in the transcription of data. Apparently, I'm told, that four fatalities is actually incorrect.

**Mr Mauro:** What about the five?

**Ms Corke:** Who can answer that?

**Mr Dowler:** I think the deputy's comments are that the state-of-safety report, which is the annual report issued for the public by TSSA—and the Electrical Safety Authority does something similar—has contained some clerical errors in the past. You have referred to them both, two of them. Hopefully, going forward, the quality of the report released to the public will be improved through checking by an external auditor. That's the issue that's raised in the auditor's report.

In terms of our day-to-day information, the deputy has referred to the protocol that we have with TSSA, which is in writing, which suggests that whenever there is an incident that involves an injury or a fatality, as the deputy indicated, we will know within 20 minutes of that occurring. It's not a frequent occurrence, thank goodness,

touch wood, but when it does happen the ministry is informed. We receive a printed e-mail which indicates what TSSA is doing in response.

**Ms Corke:** It's actually to the point where I can probably tell you the dates of some of the most significant serious injuries and fatalities. I can tell you that the bungee jumping was August 24, 1998, and I can tell you that the pipeline explosion that happened was May 3 last year. These things are taken extremely seriously.

**Mr Mauro:** I guess where I was going with it was trying to tie it into and ask you if you had any concerns about the makeup of the boards and the way the boards are constituted.

**Ms Corke:** We've had a general rule of thumb. In the legislation, the minister can appoint up to 49%, just under half, of the makeup of the board. These things were new animals for us when we first started out and we decided that we would start out with a 25%, or thereabouts, composition for minister's appointees. All of those boards are different sizes.

The Technical Standards and Safety Authority board in particular has evolved in such a fashion that, as well as the eight sectors that it regulates—they have one person from each of the eight sectors—they also have about 50%, or just under 50%, public interest appointees, which include the minister's appointees. It's a very balanced board.

My experience of the boards is also that decision-making is pretty well by consensus, so things are hashed through. You hardly ever have divisive situations. People work things through. They work on objective evidence when they're making policy decisions. I would say from here that it seems to me the board composition has been working really well. If it were not to, though, the capacity exists to improve the number of minister's appointees.

**Mr Mauro:** You said 25%. Was that the TSSA board?

**Ms Corke:** No, the general rule of thumb was that the minister's appointees would be about 25%.

**Mr Mauro:** Did that 25% include government officials as well as the public appointees that were non-industry related?

**Ms Corke:** Yes.

**Mr Mauro:** That total was 25%, so that means 75% was industry related.

**Ms Corke:** Yes, but not from the same industries; across the sectors.

**Mr Mauro:** Understood. So 75% is industry related, 25% isn't.

**Ms Corke:** Generally speaking, yes.

**Mr Mauro:** You're comfortable with that?

**Ms Corke:** With the public safety authority, TSSA, although there are three minister's appointees, there are also, I think, six other independent members. That is a very balanced board.

**Mr Mauro:** But they're in the 25%. That was my question.

**Ms Corke:** No, the 25% is minister's appointee. Then there are other independent ones at the TSSA, so half of the TSSA board is non-regulated sector.

**Mr Mauro:** That was my question, and you answered that they were included in the 25%. So, they're not. So there is 25% from the government, then the general public, then the other 50% is industry. So it's about 50-50.

**Ms Corke:** That's for the TSSA, yes. Public safety is perhaps a little different from the consumer protection agencies.

**Mr Mauro:** My last question: There was a question earlier about the natural gas problems and the number of issues that seem to arise. What are some of the enforcements, fines and conviction mechanisms that exist for you around those incidents?

**Ms Mary Shenstone:** In the pipeline incident, the TSSA has already laid a number of charges, and it's in the TSSA's power to lay those charges. The ministry doesn't lay the charges. That power has been delegated to the TSSA, and it has laid a number of charges against the utility company. It laid them in September. It's the first of the organizations involved in this unfortunate incident to have laid the charges.

**Mr Mauro:** I think the numbers were about 4,600 incidents related to the natural gas industry. Is there a chart in here specifically relaying how many convictions or charges there were out of those 4,600 incidents in the natural gas instance?

**Mr Dowler:** You have to be a little bit careful to distinguish between overall incidents, which could include a number of near misses. Someone digging in their back garden, for example, may strike a shovel, uncover a pipe, call the TSSA. That would be recorded as an incident. It's important to separate what are called serious incidents.

**Mr Mauro:** How many of those were there out of the 4,600?

**Ms Corke:** In 2001?

**Mr Dowler:** Yes, that's the audit year, but—

**Ms Corke:** I don't know that we have those numbers with us. We could get them for you.

**Mr Dowler:** It's a small fraction of the full total. We can certainly provide you with those numbers, probably by the end of the proceedings today, in the briefing material.

You asked what kinds of enforcement remedies TSSA would have at its disposal. Ms Shenstone indicated that the TSSA does have the authority to lay a charge under the Provincial Offences Act, and a fine of not more than \$50,000 or imprisonment for a term of not more than a year, or both. That's for individuals. A corporation is liable upon conviction to a fine of not more than \$1 million. That's per count.

**Mr Mauro:** The decision to place those fines or levy those fines would be the board's?

**Mr Dowler:** Not the board. It would actually be the official responsible within the delegated authority. It is the delegated authority who conducts the investigation, the prosecution, the laying of charges.

I would also mention that charges are the rarity. They tend to be used when there is felt to be evidence of some

sort of malfeasance or malconduct. In many cases you're dealing with an accidental incident. Somebody strikes a pipeline not because of any negligence or malintention; it's an accident. What the TSSA can do in that case is issue an order if it's found that there's something the utility could have done better. So they have the authority to issue an order under their legislation, which is an administrative action, sort of a lower level of enforcement than a full charge, or they can take educational action.

As we indicated earlier, TSSA has trained over 2,000 investigators who are involved in digging around pipelines in the last year, and they expect to do more than that this year. So it's not malfeasance; it's just lack of public awareness, lack of knowledge about safe digging practices.

**The Chair:** Thank you very much, Mr Mauro.

Perhaps I could throw a little bit of light, because I was the minister when Bill 554 came in and when the TSSA was set up.

The concern with regard to delegated authorities, in my view, was least at the TSSA. That was because you had a group of people who had a multitask in terms of the delegated authority. The TSSA not only takes care of people who were involved in the gas business, they're dealing with the elevator business, they're dealing with a number of other businesses. So if you appoint someone to a board of the TSSA, not only is there a large number of public appointees, but the industry appointees are not from one industry.

So if you have industry appointments from five or six different industries, if you're dealing, let's say, with the matter of elevators and there are one or two appointees from that particular industry, the other industry leaders are not going to put their reputations in jeopardy with regard to any kind of safety matter. They are going to be looking at it with as much concern as the public appointees would be, because their reputations are on the line with regard to whatever is happening.

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The concern you always have with delegated authorities, or the concern I had as the minister when they were set up: Was the industry, in terms of taking this over, understanding that the delegated authority was there for the consumer, not for the industry? The industry's interest was to create a level playing field so the bad actors couldn't charge less or provide less service than the good actors, but was the consumer being represented at the table?

My view was that the TSSA was the best of all of the DAAs because we had so many different industries at the table, and I could rely on those who were not involved with the particular subject matter to come to the best decision for the consumer. With the other DAAs that you have, I think the minister and the ministry have to be vigilant in ensuring that they continually get the message that they are there to represent the consumer. We not only have to do that with regard to the DAAs, we have to do that with regard to our health care professions, our

legal profession, our engineering profession, all those kinds of things. That message has to be continually driven in terms of what you're doing. Anyway, that was my experience with it.

I guess the other advantage of the TSSA is that they are not only involved in this business but are involved in providing other services for industry. They are involved with the Canadian Standards Association. There are other parts of society that are relying on their expertise and how solid this particular organization is, which therefore makes doing business in Ontario easier. It makes it safer for our consumers, whether it's involved under our legislation or under federal legislation or whatever. So I think the TSSA has been a tremendously positive step in terms of using a delegated authority rather than having it vested in the ministry.

**Mr Mauro:** The last one I wanted to ask was about a comment made by the auditor in his opening remarks about the revenues and expenses as they applied to this exercise previous to devolving it to the delegated authorities. I think his numbers were that previously there were revenues of about \$30 million and expenditures of about \$17 million. So I'd like your comment on those numbers, if you can, and if you can tell me what they look like since they've been devolved to the authorities.

**Ms Corke:** I'm thinking how best to tackle that.

**Mr Mauro:** I guess, to sum it up, it looked like we were making \$13 million before, and now I'm curious as to how we're doing.

**Ms Corke:** We don't take in any revenues at all from those areas any more; the ministry doesn't take in any revenues. We have delegated both the liability and the administration and the fee revenue, because they are cost-recovery organizations; they are constituted as not-for-profit corporations under the Corporations Act. They run a cost-recovery organization. They are not allowed to make a profit. They plow all their fee money back into the organization. They have increased inspection and compliance resources as a result of that. They pay for public education activities that we were unable to do in those days.

What we do is we ask for an oversight fee from them, which goes some way toward paying for the ministry structures that oversee and monitor them. I think as of last year there was probably \$905,000 that came in to us from the administrative authorities, which paid for a part of the sector liaison branch that looks after them, the legal and executive and policy resources that go into the ongoing refresh of the legislation, and some additional consulting money, about \$200,000, that we use for expert reviews. We don't have an engineer on staff, and sometimes we need to look at a code issue where they are suggesting to us that we need to do due diligence, so we need to buy some engineering expertise. But just under a million dollars comes in to us for the purposes of oversight.

We don't have any staff. I think there were about 75 staff who were devolved back in 1996 to these small administrative authorities, and the technical standards

division pretty much went out entirely, just over 200 people. So we don't have any of those expenses, but we also don't have the revenues, other than the million dollars or so.

**The Chair:** Thank you very much. I think too, though—was there not a court case early in the 1990s which said that we couldn't charge fees of more than what it cost to deliver the service?

**Ms Corke:** I think you're referring to the Eurig probate case.

**The Chair:** Yes.

**Ms Corke:** Generally speaking, the rule is that fees should not be more than the overall costs of the service delivered.

Is it protocol—perhaps not—to take a moment to respond to an earlier question very quickly around governance and whether I was satisfied?

**The Chair:** Let's go on to Mr Bisson at this time.

**Mr Bisson:** Just an observation is that—well, never mind the observation. The question is this: Is it more expensive for consumers to use live services that used to be done through consumer and corporate relations?

**Ms Corke:** Sorry. To use which services?

**Mr Bisson:** Well, for example, if I'm an electrician and I've got to call in an inspector through the ESA or I've got to get an elevator inspector to check my elevator, does it cost me more money?

**Ms Corke:** The Technical Standards and Safety Authority are in the process of reviewing the fees. This is not for consumers but for the sectors that they regulate, so not directly for consumers.

**Mr Bisson:** Is it very expensive for the person? That's what I want to know. I already know the answer, but I want you to put it on the record.

**Mr Corke:** I don't know whether they pass those costs through. I'll have to check that.

**Mr Dowler:** I would say pre-delegation, we're talking 1996 or thereabouts, so the fees today are higher. All prices are higher today than they were in 1996.

**Mr Bisson:** And does the ministry in any way, shape or form track what the cost is to the end consumer for services it used to provide, versus through these designated agencies such as the ESA or TSSA?

**Mr Dowler:** We certainly look at the process. Under the schedule to their administrative agreements, the administrative authorities are obliged to follow a certain process for the purpose of setting fees. They are obliged to consult with the people who are affected by the fees and they are obliged to notify the minister when fees change. So we are notified when fees change.

**Mr Bisson:** To the Chair, I'm not sure if I want this from the ministry or legislative research, but is it possible to get either research or the ministry, whoever is appropriate, to give us—specifically what I'm looking for is ESA and TSSA, and I guess the rest of the designated agencies—what it used to cost for an inspection and what it costs now? Can we get that? We've gotten into this whole debate where from the auditor's perspective we want to make sure that the constituent or the citizen, the

taxpayer, whatever you want to call him, is getting good value for the dollar. I think it would be informative for this committee and others to look at what it used to cost for a service prior to the designation of these agencies and what it costs now. I'm not sure who to direct this to.

**Mr Sergio:** So one agency—

**Mr Bisson:** I'm talking about all of our designated agencies: ESA, TSSA, all of those.

**Ms Corke:** We can certainly provide the information on what fee changes have occurred.

**Mr Bisson:** So I'll get an accurate reflection of what it is now and what it was then?

**Ms Corke:** Yes.

**The Chair:** I think to go along with that, though, it would be fair, whatever the agency is, that if there is a difference in outcome, we should know about that as well. In other words, if it took four weeks—

**Mr Bisson:** That's the next part of the question.

**The Chair:** Oh, I'm sorry.

**Mr Bisson:** That's where I'm going. Thank you. You're a clairvoyant.

What kind of timeline are we looking at? Can you get that to us in a week, two weeks, a month?

**Ms Corke:** The fee changes? Less than a week, I would think.

**Mr Bisson:** So that will go through the clerk and will come back to us? OK, good.

The other thing I'm interested in looking at—and just before I get off that, I want to make sure I understood your answer. So you do track the fees. You are looking at those.

**Ms Corke:** Yes.

**Mr Bisson:** Do you have any ability to make an order to an agency that if you think a fee is exorbitant, you can rein them in?

**Ms Corke:** No, we don't. Under the legislation, the administrative authorities can set their fees independently. We do have a requirement that they tell us what the rationale is for the fee increase, because it has to be cost recovery. They can't make a profit; they're not corporatized that way. They do have to consult with their industry sector, because these fees are impacting on the licensee or on the regulated sector. They have to go through that kind of process, and of course the board of directors has to be involved and has to approve it. They have to give us notice. It's more in the area of our wanting to understand and do due diligence on the rationale for the fee increases.

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**Mr Bisson:** I just want to make sure I clearly understand. In other words, if you or the minister felt for whatever reason that the fee being charged by one of these designated agencies was higher than what we think should be charged, we would have no ability to stop that other than changing legislation?

**Ms Corke:** If, where we pursued it, there was wrongdoing and they were out of whack with the costs—

**Mr Bisson:** Different issue.

**Ms Corke:** OK, but if it's in line with the costs, if it's full cost recovery, that would be proper.

**Mr Bisson:** Let me go to the next step. Apparently one of the reasons the government went to this in the first place is that there was a feeling it would be a more efficient mechanism of delivery. That was the debate back then. If over time—I'll just use the TSSA as an example—the TSSA were to get top-heavy in its administration, spending more money than it should on administration and less money on delivery of services, and the minister felt that agency was going out of whack when it comes to fees being charged, am I correct in understanding that as a government we would not be able to stop it without legislating it?

**Mr Dowler:** I think the deputy is quite correct that the fees are, in contract and in statute, in the purview of the board of directors or the administrative authority, but the minister of course does have the ultimate ability in the administrative agreement to cancel the relationship.

**Mr Bisson:** But short of cancelling, we don't have an ability. That's my point.

**Mr Dowler:** I think what you'd want to look at is the fact that, given that the minister does have that ultimate sanction, any type of discussion the minister wants to have with the delegated authority is given top priority. The minister is the delegated authority's sole customer. There is no other customer.

**Mr Bisson:** I realize that. But short of cancelling the agreement or changing the legislation, there is no mechanism for government to say, "We aren't going to approve the fee you are about to charge."

**Mr Dowler:** There would be no mechanism to force them, in law, to change the fee, but I think the point I would make to the member is that force is rarely required. Because the minister is the single client of every administrative authority, they tend to take his inquiries very, very seriously.

**Mr Bisson:** I guess this is a good segue into the next part. One of the complaints I get, for example, from the ESA is that people in the industry are saying the fees are exorbitant. What you used to pay for an electrical inspector from hydro to go in and do an inspection on a job site as compared to what you pay now are night and day. What ends up happening is that the electrician or contractor passes that on to the consumer, and the consumers and the electricians and their contractors don't seem to be too happy.

**Mr Sergio:** I don't think the report deals with what we should be charging.

**Mr Bisson:** Mario, you don't have to defend it. You didn't create this. Don't worry about it.

**Mr Sergio:** I'm not defending it. I don't think it's part of the report. I think it's how they spend it, how they record it, how they control it and how it's regulated. Am I wrong, Mr Chairman?

**Mr Bisson:** The question is in order.

**The Chair:** I think we should be able to ask all those kinds of questions. Essentially what Mr Bisson is trying to do, I think, is establish where the control mechanisms are.

**Mr Bisson:** Yes. My point is this. For example, let's say TSSA—I'm just using them as an example—all of a sudden were to go awry. It could happen, it's happened in government before, where you have particular government services by a particular branch or section of the ministry that goes a bit whacko. What mechanism does the minister have other than cancelling the contract? That's sort of where I'm going with this thing.

**Ms Corke:** In that event there is the capacity to require that they remedy it and to give them a period of time to remedy it, and then, if it's not remedied, cancel the arrangement.

**Mr Bisson:** If somebody has a complaint in regard to a fee being charged by one of these designated agencies, is there a process? Can you explain what it is?

**Ms Corke:** Yes. Each administrative authority does have a complaints process that it can go through. The other thing—let's take the TSSA, for instance—is that each industry council of the eight sectors has a regular liaison relationship with the TSSA. If the fees are getting out of whack, TSSA will hear from that sector much more vocally than it's going to hear from anybody else. That keeps them in line in terms of the top-heaviness, the efficiency issues.

**Mr Bisson:** I just go back to the experience we had when the ESA was created. I tell you, there was a whack of complaints from contractors, electricians and consumers in regard to the rates being charged. The argument is that they're charging what fair market value should be for the services being rendered when it comes to—

**Ms Corke:** Not fair market value; cost recovery, actually.

**Mr Bisson:** Cost recovery, fair market value. OK, I'll buy your argument: cost recovery. The point is that a lot of people felt it was a steep increase in a very quick period and really felt somewhat disenfranchised from that process. But that's an editorial thing and I don't want you to even comment on that. I'm just trying to establish what the mechanism is. If somebody has a complaint about the fee being charged, if I go and complain to the ESA, what happens? What's the process?

**Mr Dowler:** For ESA, they do have a complaints process, which is documented and which has been submitted to the ministry. Basically, the complaint is received by front-line staff, it escalates through the corporation and ultimately is adjudicated by, I believe, the chief executive officer or the vice-president responsible. As the deputy mentioned, we also have a consumer advisory committee that looks at trends in complaints and offers a consumer or client perspective on whether they feel the organization is being responsive to the types of complaints it's receiving.

In regard to fees particularly, there is, as I mentioned, a schedule to the administrative agreement with both safety authorities, in fact with all the administrative authorities. It sets out the process the minister has agreed to by which fees will be set. There is a consultation provision in that process.

**Mr Bisson:** With whom?

**Mr Dowler:** The ESA did follow that process when they went forward with the fee increase that the member is referring to. ESA was a special case. It's our newest and largest administrative authority. It's the smallest successor corporation to Ontario Hydro. They were charging fees based on the old Ontario Hydro fee book, which, as we heard from electrical contractors, was both very complicated—it was about the size of a dictionary. There were many fees charged for various parts of a work order, which electricians found very difficult to administratively cost out.

**Mr Bisson:** Have you ever had any difficulty in the trade?

**Mr Dowler:** Well, we heard from people like the IBEW and others indicating that some firms had difficulty working up a job costing and doing takeoffs when—

**Mr Bisson:** On the bigger jobs.

**Mr Dowler:** On the bigger jobs. The price of working at a ballast would be different, and grounding etc.

So the fee structure was simplified, first of all, but the fees were increased in some areas—only, I would add, after ESA had incurred a year with a substantial financial loss in the annual report it had published.

To your concern, in which you indicated that perhaps an administrative authority might be taking in too much money, there are two controls. First of all, they have to do a fee process as per their administrative agreement, which involves consultation etc. Second, whatever revenue they take in they are accountable for in terms of their audited and available financial statements, which are tabled in the Legislature. Third—and I suppose this is also a control—these are non-profit corporations, so there's not a possibility that monies would be taken in and distributed to shareholders. There are no shareholders, so every nickel they bring in—

**Mr Bisson:** That's not the issue. The philosophical point is, should we be doing a complete cost recovery or should that be part of the cost of running a hydro corporation? That's really the question. Under the old system, part of running a hydro corporation such as Ontario Hydro included inspections and making sure jobs were done according to code. The fee structure was not cost recovery; it was just part of doing business. There's a different approach now. We're doing cost recovery. Philosophically, they are two different positions.

I'm not worried that the ESA is going to take the money and run to Mexico. I'm not for two cents worried about that. It's just that the complaints I get—because people know where I come from in terms of my background—is that when this started up, for about a year or two after, there was great difficulty with the fee structure. But that's done and that's not the point of my question.

What I'm really interested in is that when there is a complaint made with regard to the cost of either an ESA or TSSA fee, it's an internal review, which I understand. We've gone through this process. But at the end of the internal review, if the response that comes back is not

satisfactory to the complainant, where do you go from there?

**Mr Dowler:** The complainant always has the ability to complain to the ministry if they're unhappy with the way any delegated authority has resolved their complaint. I do get complaints from time to time from electrical contractors, both because I happen to sit on the Electrical Safety Authority board as our minister's representative, but also I or other members of my staff get complaints just as being part of the ministry. In those circumstances, we review the complaint, we look at the issues, we talk to the delegated authority, we get their side of it, and in some cases changes are made. In other cases—

**Mr Bisson:** Where I'm trying to go with this is that when the complaints end up coming to the ministry there's a check the ministry is able to do about how well the system is working. Do you guys tabulate that in any way? Do you look at those complaints and then make some kind of determination?

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**Mr Dowler:** We do tabulate the complaints received against each—

**Mr Bisson:** Is it a public report? That's the other question.

**Mr Dowler:** It would probably have to go through a freedom-of-information request just to make sure there isn't personal information in the complaints we receive. You know the types of letters that constituents write. Often they do disclose personal information, so we would have to sever that out. But certainly that sort of information would be made public.

**Mr Bisson:** Is that information in any way used to look at whether any adjustment to the contract needs to be done?

**Mr Dowler:** Yes.

**Mr Bisson:** What's the process there?

**Mr Dowler:** We have just renegotiated a number of the administrative agreements successfully. We do look at all the types of complaints we receive, we look at issues we receive in the paper, we look at ministers' correspondence, we also look at the experience of members who are the government reps on the boards—they give us their sense of how things are going generally—and make amendments accordingly.

**Mr Bisson:** As a result of any of the tabulated reports you do every year on the complaints, has there been any adjustment to any contracts or practices? Can you give me some kind of example?

**Mr Dowler:** Yes, there has. I think the deputy referred to the changes that are afoot at the Ontario New Home Warranty Program. Some of the changes have come from the program itself, some very positive changes, with respect to the—

**Mr Bisson:** But specifically to the ESA/TSSA is the one I'm wondering about.

**Mr Dowler:** Yes, there have been some changes with respect to ESA fees which were responding to complaints raised by the industry. As well, there's been consideration of some newer policy items, again in response to

concerns being raised by electrical contractors. One of the issues that has been a historic point of discussion in Ontario is the fact that the Ontario electrical safety code currently requires a permit for every piece of work done in Ontario. Many consumers have come to us and said, "My God, if I'm going to replace a light switch, I would need to go to ESA and take out a permit for that. The switch will cost me \$10. The permit will cost me \$110, and I'll have to take a day off work to wait for the inspector to come to my house, all for the purpose of checking whether a white wire and a black wire were reconnected the same way they were taken out."

That has come forward as a point of discussion. The ESA has been on the road, as you're probably aware, discussing that both with the trades and with consumer groups. It's come forward in the form of a request for a basic exemption. I believe the province of Alberta has something that says for work which is like-for-like replacement which is below a certain voltage, so it poses a relatively low safety risk, if the work is done by a qualified person, a licensed electrical contractor, in those circumstances, a third-party inspection is not required.

**Mr Bisson:** I certainly get the complaints from the consumers, because the electricians tell them to call my office. The big complaint is on that kind of work, so it's good to know that maybe there is some hope coming that way.

The other thing in regard to the ESA/TSSA issue—well, more on the ESA side—is on the apprenticeship side. If I understood the report correctly, consumer and corporate relations tracks the number of apprentices in the trade?

**Mr Dowler:** No, that's done by the Ministry of Training, Colleges—

**Mr Bisson:** That's what I always thought. But there was a reference by the auditor about apprenticeships, and I'm just wondering how that ended up inside the report.

**Mr Andrew Cheung:** Different parties are responsible for different things. Right now it's kind of a patchwork. The municipalities, the Ministry of Labour, all have different involvement in that area.

**Mr Bisson:** So the ministry doesn't track the number of apprentices in the system? That would be through skills, training and universities?

**Mr Dowler:** It's through the Ministry of Training, Colleges and Universities. They have the responsibility—

**Mr Bisson:** But you don't track that.

**Mr Dowler:** We don't track that, no.

**Mr Bisson:** Would you know how many licensed people are in the trade? You would track that kind of information? Because you're the licence-giver, right?

**Mr Dowler:** No, we're not the licensing body. Again, that's the Ministry of Training, Colleges and Universities and the municipality. I believe that's the point the auditor's report is speaking to, that currently the system for regulating electrical safety is divided. ESA has responsibility for issuing permits and doing inspections on those permits, but ESA, unlike all our other delegated authorities, has no responsibility for checking the

qualification of the person who's doing the work. That responsibility currently rests at the level of certification with the Ministry of Training, Colleges and Universities. They look at apprenticeship, certificates of qualification etc. In many municipalities, under the Municipal Act—you would know, as a contractor, that many municipalities also license the business under the Municipal Act authority of electrical contracting.

So I believe the auditor's report flags a little bit of a concern with the fragmented nature of the regulatory system, that right now it's kind of a patchwork quilt of business licensing. If you want to work on one side of a boundary, you would need one licence, and if you want to go the municipality next door, you need another licence, which may have different standards, and the issue of the certificates of qualification, the apprenticeship side of it, is covered by another body. I think the thought is that perhaps bringing it all together under one roof would—

**Mr Bisson:** A last question on the delegated administrative authority: Has any kind of, for lack of a better term, net cost-benefit impact study been done in regard to how they do their business? Does the ministry concern itself yearly or every couple of years about how they're performing vis-à-vis their mandates?

**Mr Dowler:** We certainly look at the performance of the delegated authorities quarterly or even daily, depending on what kind of issues cross our desk through the protocol that the deputy mentioned. We also sit on many of the boards, so we concern ourselves even more frequently, because as directors we're responsible and in fact personally liable for the actions of the corporations. We do get involved on that basis as well.

In terms of a cost-benefit analysis, a real quantitative exercise, no, we have not done that. We did an independent evaluation prior to the auditor's arrival by PSTG Consulting, looking at the eight delegated authorities and their performance over time. And of course, we've now had the benefit of the Provincial Auditor's review as another third-party look at the whole process of delegated—

**Mr Bisson:** I just want to understand this. They operate under your authority. There's no other way of putting that. How does the ministry make sure that at the end of the day, it's delivering the level of service that we think the public should be getting for the cost we think is fair? Is there an annual exercise? I guess the question is to the auditor, really, not to the ministry. Are you satisfied that that is being looked at?

**Mr McCarter:** Our concern was that a number of the delegated authorities weren't reporting that information. The Ontario Motor Vehicle Industry Council was doing what we felt was an excellent job, and we just felt that for some of the others, if they were reporting what it was reporting, it would improve the process.

**Mr Bisson:** So from the auditor's perspective, there really isn't the oversight—actually, oversight is the wrong word—checks and balances from the ministry to be able to say, "All right. Its original mandate was to

provide this number of services. Are we getting, cost-benefit, a good deal?"

**Mr McCarter:** It's more that we felt there should be better reporting of outcomes and activities, and I think the ministry has indicated that they're going to do that. We provided an example, saying the Ontario Motor Vehicle Industry Council is doing a very good job and it would be a good template to use for the other ones. I think they're addressing that.

**Mr Bisson:** In a bit of a different vein, when it comes to the number of regulations now being created, I would guess the TSSA is the largest of those delegated administrative authorities that deal with regulation, right?

**Mr Dowler:** They all have regulations.

**Mr Bisson:** But that would be the bigger one, right?

**Mr Dowler:** ESA is the largest in terms of size of organization. TSSA would be the third-largest.

**Mr Bisson:** In terms of the amount of regulation being created, is there more regulation being created today under the auspices of the TSSA, less regulation?

**Mr Dowler:** It's a difficult thing to measure. You can't really measure regulations by the sentence or by the square inch. I think the perception in the regulated industries is that TSSA's regulatory efforts would be more responsive today to the types of incidents we're seeing out there. They have established a risk management department, which didn't exist before. They do root cause analysis of every single incident to try to find out what the driver was that caused the incident. They try to tailor their regulatory response to attack the thing that is giving rise to safety issues, as opposed to simply inspecting against code. They do that as well, but I think they try to be more focused on the root cause than the technical safety division did prior to delegation.

1400

**Ms Corke:** If I could interject, I'd just like to say that regulations are the department of the ministry. The ministry is completely responsible for regulations. In the last few years, we have completely overhauled the seven or eight statutes that used to govern this sector and streamlined them and modernized them. I don't think you would say that there is more regulation. In fact, it's easier for the sectors to work.

**Mr Bisson:** I'm just going to get to a specific example in a minute, but before I get to that, my question is more, are we seeing more activity vis-à-vis the need to create regulation by these regulatory authorities? Are they driving the creation? That's the question I'm asking.

**Mr Dowler:** It's a hard answer to give you quantitatively. My perception is no, that they're not driving—

**Mr Bisson:** That's fair. You gave me an answer.

**Ms Corke:** I'm going to ask Mary Shenhstone to add something to this.

**Ms Shenhstone:** I'd just like to add that—

**Mr Bisson:** I've got more questions.

**The Chair:** We'll come around to you again, OK? You've been on for 25 minutes, Mr Bisson, which is about the same—

**Mr Bisson:** So we're going to go about 20 minutes per caucus then? OK, that's fine.

**The Chair:** I try to break the time equally among the three parties, and the governing party tends to have less length of questioning.

**Mr Bisson:** My questions are short, with long answers.

Just before they disappear, is there somebody from the TSSA here today? When we come back around, I've got questions of the TSSA.

**Ms Shenstone:** Mr Chair, may I just add that the TSSA has been a great proponent of preventive measures, which are not regulatory. In fact, it sees regulatory action, and regulation as only one aspect of public safety. It has done a lot of things on the preventive side—for instance, educating the public—for which the public doesn't pay directly, and educating the services and the service providers.

**The Chair:** Mr Fonseca and then Ms Sandals.

**Mr Peter Fonseca (Mississauga East):** Actually, this was just brought up while Mr Bisson's question was being answered. The public doesn't pay directly but probably pays indirectly in terms of final cost to the public. Would you say that's correct? You were talking about some of the educational programs. Those are all factored into the costs, are they not?

**Ms Shenstone:** The costs the TSSA charges are factored into what it charges—for instance, the elevator companies or the boiler manufacturing companies—to pay for the review of their licences. They're tiny costs when you factor it out per elevator or per boiler, so the pass-through to the consumer is probably quite minimal indeed when you're talking about \$120 or so for a round's worth of inspection, for instance.

**Mr Fonseca:** That's a yes.

**Ms Shenstone:** It's a yes.

**Mr Fonseca:** In the complaints and inquiries, the total number I'm seeing here is 32,668, but the other number that was thrown out, I'm not sure whether by the deputy minister or by the ADM, was somewhere in the range of 60,000. Is that correct? Can you explain that?

**Mr Dowler:** That's the current number. For the 2003-04 number, we will probably finish this year tracking in excess of 60,000. Complaints have risen quite significantly.

**Mr Fonseca:** So from 2001 to the 2002 year, they've risen 100%?

**Mr Dowler:** Yes.

**Mr Fonseca:** For what reason? Why has that happened?

**Mr Dowler:** There are two reasons I would give you, and I should say that these relate to any number of the issues under the 20 consumer statutes that the ministry itself administers. But there are two reasons.

The first one is that we have had a significant amount of consumer legislative reform in this province, probably more in the last three years than Ontario has ever seen before, so there has been quite a bit of public discussion and exposure to consumer protection issues. There was

public consultation on the legislation that was given royal assent just before Christmas of last year. With the bereavement legislation, that issue has also got some public attention. So people, I think probably to the good, have been increasingly aware of the ministry's presence and have been able to take their concerns to the ministry.

The second point I'd make is that these are complaints and inquiries. An inquiry is a telephone call we get, and it may just be a question; you know: "What does my fitness club have to do under the Prepaid Services Act?" It may not actually be a sworn written complaint. Sworn written complaints are much smaller than the overall global number. They tend to be matters that do require significantly more attention.

**Mr Fonseca:** If we can go back to the proportionality of 2001-02 complaints, we did see that theatres and video retailers were up, at a 95.9 percentage of inspections. Can you give me an indication of what those video retailers would have been around two years or three years prior to that?

**Mr Dowler:** Approximately the same. As I mentioned, that is a sector where, first of all, the nature of issues we look at are matters that lend themselves to a field inspection. Secondly, as I also mentioned, it's an area, particularly the adult video area, where, for whatever reason, given the nature of the industry, compliance has been an issue. We have seen products sneak into retail stores which have not been approved by the OFRB and which most people in Ontario and in fact the Theatres Act itself would say are illegal.

**Mr Fonseca:** So some of the points that were brought up, like the new stickering program, really were not the reason for bringing up that percentage, because you're saying it was happening prior to that.

**Mr Dowler:** I would say that the reason for maintaining that percentage related to the fact that the program was introduced. The program was introduced because we had a history of non-compliance in that sector and we wanted to provide more tangible evidence that the inventory being carried by the licensees, by these stores, was approved by the Ontario Film Review Board. So now today, each product carries a bar-coded, encrypted, three-dimensional, tamper-resistant sticker which is legally required to be applied to each of these boxes. The reason for maintaining theatre inspections at that level was due to a history of non-compliance and due to the new program and the necessity of educating small business people as to their rights and obligations under the new statute.

**Mr Fonseca:** So now that we're changing the percentage of inspections—we're going to do what? Is 35% what we said?

**Mr Dowler:** We're at 32%.

**Mr Fonseca:** So with that 32% for that group, how will that affect that market?

**Mr Dowler:** We're moving now much more toward an enforcement regime and less toward—you know, in the early years of any new program, you don't rush to lay charges. The first instance is to make sure you go to the

root cause of the non-compliance, and if the root cause is that the store owner wasn't aware of his or her obligations, you inform them. You issue a warning letter. I would say we're at the point now where the warnings are pretty much over, and where we see non-compliance, that is, where we see product that the board hasn't approved, which may involve violence and people being harmed and engaging in this type of activity, we will move directly to a seizure or a charge or, in cases of high levels of recidivism, where the licensee is not showing any inclination of moving toward compliance, the statutory directory would move toward a proposal for revocation of their licence.

**Mr Fonseca:** And that hasn't happened in the past.

**Mr Dowler:** We've always had an escalating scale of compliance. We don't rush to lay a charge. Obviously, the first response is a warning; strike one, if you will. If upon reinspection we find that the situation persists, then the level of enforcement is notched up accordingly. We're at the stage now where the program is no longer new. It has been in the marketplace for a sufficient length of time that each licensee should know their obligations. As a result, I think we're past the warning stage. If we find that we can get by with fewer inspections, we will probably move toward investigation and enforcement for those few bad apples more quickly. So you will expect to see, as you see today, a smaller number of inspections and probably more registrar's actions: more suspensions, more revocations, that sort of thing.

**Mr Fonseca:** Thank you.

1410

**Mrs Sandals:** I think this is actually carrying on from there. I'm looking at the table on page 103, which seems to be a summary of the ministry's activity from 2000, 2001, 2002. I noticed that when you moved from 2001 to 2002, the number of inspections seems to have gone down fairly dramatically. I hear what you say about moving perhaps more toward investigations, but the number of investigations over that period in fact seems to be dropping off as well. The number of charges laid is up and down a bit, but the number of convictions seems to have fallen off quite dramatically. Again, I understand that you lay charges one year and they don't show up as court cases till the following year, but just taking that—and the money returned to consumers also seems to have dropped down quite dramatically.

On the face of it is a table that seems to show a decrease in activity in all sorts of areas. What would the explanation be for that? I think what we're hearing from you is an intent to beef things up and make it more effective, yet the numbers seem to show a trend in the other direction.

**Mr Dowler:** It's a reasonable question. I think what we're seeing in terms of money returned to consumers and convictions is really a function of what the courts are awarding based on the cases that we're bringing. The courts generally sentence in accordance with the fact situation that's presented before them. So let's say in an auto repair complaint that we're working on under the

Motor Vehicle Repair Act, if it's a person's first-time offence—so they have no history of repeat offences—and if it's a single count that we're bringing forward—they've only had issues with one consumer and not 150 consumers—then the amount of fine, penalty or restitution that the court would consider or that might be considered on a plea bargain would be lower than would be the case if we were working consumer complaints that involved complaints against 150 consumers. So it really depends on the nature of the cases that we're bringing to court. That's what determines the nature of the sentences that result.

We did recognize that in 2002, in terms of what was coming out of our investigations, the numbers did dip a little bit. We took a look at them and we found that the cases we were bringing to court were ones that rated highly on our case-ranking system. So we felt that our staff were making the appropriate judgment calls in working these cases. But it just worked out that the cases were of a characteristic that resulted in the court awarding less in fines and restitution than was the case in the year prior.

Now again, as I mentioned earlier in the day, these numbers do move around a fair bit, and for the 2003 year, I can tell you that the numbers have come back up again quite considerably. I don't know that I would conclude from that that staff are being necessarily more hardnosed or necessarily more effective. It's just a function of what consumers are bringing to us in the form of complaints. If consumers are bringing to us complaints with very significant amounts of damage, then the judges and the justices that we deal with will award significant sentences, and that will cause our numbers to go up.

So there is a certain amount of play in these numbers. I wish I could give you a more detailed explanation than that, but I think that really is what you're seeing.

**Mrs Sandals:** I certainly hear what you're saying about shifting maybe from inspection to investigation, but the numbers don't show that, at least not when you look at it in this time frame.

**Mr Dowler:** The other comment I would make is that every investigation is different. Our unit of measurement in respect of performance management is an investigation. I can't look at my 12 investigators and say, "You've each got an expectation that you'll do 75 investigations this year." Some investigations take three days; some investigations take 90 days. It depends on the nature of the witnesses, the number of witnesses, the distance between witnesses, whether there's physical evidence that has to be gathered, whether witnesses have difficulty in actually presenting their information—they may be frail, elderly, have work commitments and that sort of thing. It can dramatically affect the nature of a case. So it's very hard for me as a manager to say, "I expect everybody to bring me 75 investigations and, if they don't, we're going to have a performance conversation." When I actually do the case reviews with the director and with the managers, I find that every case is its own story and you really have to look at it on that basis. It's very difficult to count these things as if they were units of performance.

**Mrs Sandals:** Given that there's legitimately a lot of variability in the sorts of things you're doing, when we look at the chart on page 99 and the majority of the complaints and inquiries that you're receiving are captured under "other"—usually when you look at a chart at something like this, you see a lot of major categories and then you see a few things captured under "other." Here, the vast bulk of your work is captured under "other." Could you tell us a little bit about what is under "other" and what specific areas of concern are showing up in terms of trends under that "other," which is obviously a huge area that we haven't talked about at all?

**Mr Dowler:** Fundamentally, the Business Practices Act is probably our busiest statute. As I mentioned, we administer some 20 consumer protection statutes. The Business Practices Act is a law of general application and it sets out certain obligations on anybody who's selling directly to consumers. It talks about unfair business practices, things like misrepresentation, high-pressure sales and unconscionable transactions, and it prohibits those.

That's probably our busiest statute, and that could affect anything from the sale of merchandise—fax machines and that sort of thing. Let's say a consumer bought a fax machine and it didn't work the way they expected it to, so they have a concern under the Business Practices Act. Or it could affect any number of other things.

I would say, in terms of our top 10 list right now, we would also deal with some other statute-specific areas. Motor vehicle repairs is always a big one. We have the Motor Vehicle Repair Act, which requires that consumers be given a chance to offer consent before certain repairs are done and requires that prices be within a certain proportion of the estimate. So we get a certain amount of traffic under the Motor Vehicle Repair Act.

Credit repair is a big one. People who sign up for credit repair services—you've seen the ads: "We clean bad credit," is the product claim that's made. We have, as a result of the number of complaints received in this area, gone forward with statutory provisions which prohibit the taking of an advanced fee before credit repair services are granted. We found that many of these companies were offering to clean bad credit and then taking the money and not offering anything in return. So that's now an area that is prohibited in statute.

Health clubs, under the Prepaid Services Act, talent and modelling, fitness clubs: The contractual obligations that consumers get into with these operations are an area of concern. Home renovations, particularly at this time of year as we're heading into—I think we're heading into—spring. The renovation season starts and roofing complaints—senior citizens who feel that they've been the subject of misrepresentation or high-pressure sales by, in some cases, door-to-door roof or renovation sellers. Vacuum cleaner salespersons is another big area that has been an historic problem for us that we look at.

**Mrs Sandals:** So most of these would be in some way connected, then, to sales or consumer contracts of some sort.

**Mr Dowler:** Always consumer. The branch is not responsible under its statutes for any business-to-business transactions. It's just business-to-consumer transactions that we deal with.

**Mrs Sandals:** One other question: On page 104, the auditor has talked about complaints about complaint-handling, or at least a survey that was done where the staff who were taking the calls were also conducting the survey, which struck me as a little bit of an unusual practice. Having been somebody in a past life who was subject to class surveys of, "Did they like your teaching," it was certainly a practice that I had to be out of there and couldn't even be in the room while the survey was being conducted and I never saw the paper until the tabulated results came back. So it was certainly, "Hands off; no intimidation; get out." All you get are the results.

Have you looked at all at changing that practice around how you actually survey people who have made complaints, to see what their level of satisfaction is? Because clearly this is one that isn't going to work terribly effectively.

**Mr Dowler:** Yes, we agree with the auditor's suggestion that our methodology for surveying customer satisfaction could be improved by having an objective third party collect the customer satisfaction data. The reason that we have done the surveys the way we have done them is that it's quite inexpensive and, as a result, we can get very timely, frequent information if, at the end of receiving and working a complaint file, the service bureau officer can simply ask three questions: Was the service timely; please rate your satisfaction; and was it polite? Please rate your satisfaction and rate your level of consumer satisfaction on a five-point scale. It can be done very cheaply and inexpensively, and as a result, we get tracking data on a weekly basis. We couldn't afford to do a survey on a weekly basis. It would just be cost-prohibitive.

1420

The auditor makes a good point. There is the possibility of bias, because the person administering the service is also the collector of the data. So as a result, we have hired Compass Research, which is an independent survey firm, to come in and look at not just MSSB but all of the ministries' call centres, and to conduct an independent survey of customer satisfaction.

The results for the ministry as a whole seem to validate the results that are coming through our staff tracking survey. As the auditor mentions, our data indicate about a 90% client satisfaction rating, which is very, very high for a government organization. In fact, it's very, very high for a private sector organization. So we're delighted with that number.

The Compass survey, which looked at all of the ministries' call centres, found that about 92% of respondents rated the ministries' service very highly. So we think that survey instrument can be improved in years going forward to get better data specific to the MSSB, but we accept the recommendation and we think that it is important for us to validate with a third party the tracking survey that we get from our staff.

**Mrs Sandals:** But you have in fact acted on that one and moved the survey—

**Mr Dowler:** We think we can make it better next year, but we've moved quickly and done the Compass survey this year, which is independent validation. It appears to indicate that the information collected by staff is valid, but we think we can improve the methodology even further next year.

**Mrs Sandals:** Thank you.

**The Chair:** I can't remember what the satisfaction rate was when I was the minister, but I think it was 96% or 97%. Mr Dunlop.

**Mr Garfield Dunlop (Simcoe North):** It's a pleasure to be here. Again, I'm subbing for someone this afternoon so I don't have a lot of preparation time on this particular subject, but I do have a construction background. I have a lot of friends and people whom I know in the construction industry.

I can tell you, on the Ontario New Home Warranty Program, I have to agree with the customer satisfaction portion of it that you had mentioned. I think in my time as an MPP, I've had about three or four phone calls from dissatisfied customers who couldn't get along with Ontario New Home Warranty or their builder, and each time that I asked the question or brought the complaint forward, it was responded to immediately, and the homeowner went away very happy because they responded quickly with either another builder or the previous builder had gone back and actually made the corrections.

The only complaint I hear is from the builders, and that is the amount of money they pay into the system. I'm wondering if you can tell me: How much money is actually in that account that the builders pay into, and how is it invested? Is that something that I can ask here today? Is that a fair question?

**Mr Dowler:** Yes, you can certainly ask that. I don't have the number at my fingertips, unfortunately. I can give you an educated guess, but I think it'd be more helpful if we just provided the committee with the annual report for the new home warranty program for the last fiscal year. It is tabled before the Legislature and it is audited by an external auditor. So I think that's probably the best way to respond to your question: just give you the annual report and you can take a look at it.

**Mr Dunlop:** Excuse my ignorance on it. Is it in a separate account that is controlled by the Ontario New Home Warranty Program?

**Mr Dowler:** Yes, it is. It's in a reserve account and the reserve is managed in accordance with generally accepted principles for the insurance industry. It's not a statutory requirement that they follow the reserving requirements that are set aside for the insurance industry, but because of some past issues that the board has had to deal with, they have gone toward a DCAT type of analysis, which is a method of looking at current activity and deciding how much future resourcing has to be set aside to cover expected claims in the future.

**Mr Dunlop:** Is it possible that you have enough money in the account that you could reduce the cost of

the Ontario New Home Warranty Program? Because the builders are telling me they're wondering what's happening to their money. They have 50 houses or 60 houses they build and they're not getting any callbacks or very few callbacks. What's happening to that money? That's what their concern is. I just wanted to ask the question to see if it's a legitimate concern or in fact—

**Mr Dowler:** It's a good question to ask. The committee has had some other questions this afternoon about fees in general. The warranty program has reduced its fees once in the last three years, if memory serves, and they are right now extremely busy looking at ways to improve some of the consumer protection side of the business. I mentioned earlier that they'd just brought in a new home owner information package. They've doubled deposit protection. They've gotten new mandatory time frames for delivering on claims. It is a period, during the warranty programs time, when they really are reinventing themselves. Is this a time when you would want to reduce your revenues significantly? Probably not, but the program is changing fairly considerably right now and they probably want to get a little bit of a track record with the new provisions before they go ahead and look at that revenue account. It's certainly something the program has looked at in the past and has reduced its fees, and they could look at it again in the future.

**Mr Dunlop:** I'm talking about Simcoe county builders. They're probably some of the best builders in the province. I want to pass that on to you as well. I don't know if they're the same across the province or not.

**Mr Dowler:** I don't know either.

**The Chair:** When you say there was a reduction in fees, I think it's fair to say it was a significant reduction too. I think it was from about \$750 to about \$550 per home, something in that range. I'm seeing some nods behind, so my memory serves me correctly. The reduction to the new homeowner, because this is a cost that would be passed on, would be significant.

The other part is that this is a really large program. As I remember the number, it was something like \$15 million a year to run it. It's a significant self-insurance program. I think the claims were running at \$40 million or something like that, in terms of going back for the various different periods of time.

The other thing the home warranty plan does, and did when I first came into government in 1995-96 as minister—we had a serious problem with vents on some gas furnaces. This was about an \$8-million to \$10-million problem. I went to ONHWP and said, "This is a real problem." It was a manufacturer's problem. In essence, it probably would have been a federal jurisdiction area, where the feds should have looked at this particular product and not guaranteed it and all the rest of it. Because it was such a deadly result if there had been a fault in this particular vent—carbon monoxide getting into the home, which of course you can't smell or know is there—they stepped into the breach. They took a \$6-million to \$8-million gamble and eventually won. They went after the manufacturer and recouped it. It didn't cost

the government anything, but they did step up to the plate.

As a former minister being put on the spot of stepping in and trying to protect a number of consumers across Ontario who had innocently bought homes that had these faulty vents from their furnaces, I always have a lot of time for this organization. They were willing to step into this breach when there wasn't really any other way to handle it. It's a big organization. A lot of other jurisdictions don't have this. So for \$550, I think it's a pretty good insurance policy for most of our new homeowners.

Mr Mauro, and then Mr Sergio.

**Mr Mauro:** The report talks about some cemeteries having been exempted from some of the requirements. Is that in any way connected to a shortage of staff resources?

**Mr Dowler:** It's always a question of wanting to make sure the people you have spend their time where it can do the most good. I think the reason for that particular decision was to try to focus on cemeteries that posed the biggest risk to consumers. The thought was that cemeteries that bury fewer than 10 people per year really weren't as high on the risk radar as a Mount Pleasant Cemetery or something larger and more active and holding more monies in trust. It was related to resources to some extent, I guess, but it's also probably more fundamentally related to wanting to put first things first and really focusing our effort where it can do the most good for consumers.

1430

**Mr Mauro:** It was mentioned earlier when I asked a question that about \$1 million is taken back from the DAAs into the ministry for oversight. Was it originally anticipated it was going to be about \$2 million when this delegation took place?

**Mr Dowler:** It was about \$2 million in the early days of delegation. There was a go-forward provision that was negotiated as part of the first administrative agreements that said, "We will keep a docket in the policy, legal services and other areas in the ministry. We will measure the time we spend on your account." For places like TSSA, which had a fairly ambitious legislative undertaking, we docketed quite a bit of time to them.

But the provision said, "If it's found that we're not spending as much time working on your account, then we will reduce our fee accordingly." What has happened over time—for example, with TSSA it was found that they were paying us a little bit more than we were expending in terms of legislative time, legal time, legal services time etc, and as a result, on a go-forward basis their oversight fee has been reduced to account for that. So we're basically working on a cost-plus basis, and we've made adjustments based on the amount of time they're consuming.

**Mr Mauro:** At the end of the year when you get X for oversight, has there ever been a year where that total has not completely gone toward oversight? Has any of it just gone to general revenue?

**Mr Dowler:** It all goes to general revenue.

**Mr Mauro:** Does the same amount come back to you for oversight?

**Mr Dowler:** Probably. We don't really keep accounts that way. We basically work through the estimates process to get our appropriation for the purposes of spending, and on the revenue side, that goes into the consolidated revenue fund.

Certainly, with the four staff who worked directly with Ms Shenstone initially in her branch—I think there are actually six staff today—together with the legal services staff who would support them when legislative or regulatory work is being done, together with the legislative time that goes into supporting the delegated authorities, I would say that, altogether, would probably amount to as much or more revenue than the DAAs contribute.

**Mr Mauro:** Somewhere in the information we got back, we were told that in one of those years only about \$388,000 went back into oversight. I still go back to my original question about, if that did occur, and if you have a shortage of staff resources, this might be one of the common themes we're seeing here in terms of inability to conduct a number of investigations and inquiries and follow-ups on complaints that the auditor seems to think is required.

**Ms Corke:** The \$380,000 you're talking about is the amount of money for salaries and wages for the dedicated staff in the sector liaison branch. In actual fact, there is other money that goes to pay cost recovery for the policy and legal staff we use in the statutory reviews and legal work, and also in some of the executive overhead.

Just to answer a previous question, in the early years we did charge more in oversight fees than we took in to the ministry, than we were allocated in the ministry. In those early years, before we moved to cost recovery, we did in fact take in more from the administrative authorities than we spent, and it did go into general revenue.

**Mr Mauro:** When did that change?

**Ms Corke:** That changed in 2001-02.

**Mr Mauro:** So you're only taking as much from the authorities as you need for your oversight expenses?

**Ms Corke:** Now we are. Now we're basing it on cost-recovery principles. Earlier it was a proportion of fees taken in from the three smaller administrative authorities, but now that's changed.

**Mr Mauro:** Thank you.

**The Chair:** I can say that this was a quirk I put into it. The ministry really never had thought about collecting the oversight. But my concern was that the ministry always have oversight, and if we didn't put aside a revenue source like we get from the various agencies, then there would never be this play in the questions you just asked, that there is in fact a significant amount of money there for oversight of these administration agencies.

**Mr Sergio:** I want to go back to your question about the Ontario New Home Warranty Program. Can I get in there with a question, given my—it's not a conflict?

**Ms Corke:** No. I think I know what you are speaking about. I think you're fine.

**Mr Sergio:** If there is one area I get a number of complaints about, it's that—and I'd like you to dwell a little bit on it, explain a bit more about the relationship between the agency itself and complaints, the number of complaints that have been looked after and satisfied and those that have just given up, for whatever reason. Either they were too small or too long or they just gave up. What is the relationship between the ministry, the department and the agency, and how do we get those two to satisfy a high percentage of those complaints?

**Mr Dowler:** It's a difficult thing to measure when consumers just give up. I think our hope would be that the process would never be such that a consumer who is making a legitimate warranty claim would ever feel compelled, because of the nature of the process, to just give up.

**Mr Sergio:** Well, a large number, I'll tell you, do give up. They believe the system is not in the consumer's favour.

**Mr Dowler:** We have heard some concerns from consumers. In response to that, the ministry has taken some action, but more to the point, the new home warranty program has taken some action. Probably the best example is the mandatory time frames that they've put in place. In the former process, to give the program credit, they always wanted to allow the builder and the consumer an opportunity to try to try to work it out. Consumers, though, on many occasions came to us and said: "This process seems to go on forever. At some point it would be helpful to everybody if the warranty program would just step in and say, 'Time's up. It's going to go to conciliation,' and the warranty program would make a decision as to whether it's covered or not, and the decision is binding."

That, in effect, is what the warranty program has now put in place. There is now a set of legally binding time frames where the builder is given a reasonable opportunity to respond to the consumer, where the consumer is given an opportunity to go back and forth with the builder—if it's about a missing countertop, or perhaps just a workmanship issue where the consumer's view is that the workmanship could be better—and there is a discussion that takes place. But at the end of a set time period, the warranty program does step in and they make a conciliation decision and that decision is then appealable to the licence appeals tribunal. With the introduction of mandatory, legally binding time frames, hopefully consumers will now find themselves in a much more certain process where no one will have to just give up out of frustration.

**Mr Sergio:** The Chairman was saying that there seemed to be a lot of money. They don't know where the money goes or what they do with it. Who supervises these two agencies? Were they self-supervised? Who are they accountable to?

**Mr Dowler:** The new home warranty program is a non-profit corporation under the statute which is responsible to a board of directors. The board of directors' composition is set out in a bylaw. The bylaw requires that

there be a provincial government representative, a municipal government representative, a representative from the financial services sector, one consumer rep—although their practice has always been to appoint two consumer reps—and the balance would come from the registered building community. The board of directors is responsible for managing the corporation. It is subject to an annual external audit. The annual report, which would include the audited financial statements, is then tabled before the Legislature. That also is a statutory requirement.

**Mr Sergio:** I have one more little question, Mr Chairman, on the digging for gas lines and stuff like that. I wasn't sure from your answers before whether a licence is required and it's up to whoever is doing the work, the builder or whatever, to get a licence, to get a permit, from the local municipality?

**Mr Dowler:** I'm sorry. Are we talking about the new home warranty program?

**Mr Sergio:** No.

**Mr Dowler:** In regard to the electrical side, many municipalities choose to license electrical contracting firms. It's a voluntary program. Some municipalities do, some municipalities don't. They do it under the bylaw provisions of the Municipal Act. In addition, the province, through the Ministry of Training, Colleges and Universities, does require a certificate of qualification for all electricians in the province. It's a compulsory trade. So you have to go through an apprenticeship and, at the end of the apprenticeship, you can become a journeyman and get your certificate of qualification.

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ESA, the Electrical Safety Authority, is our only delegated authority that is only responsible for construction and installation. It's not responsible for looking at the credentials and qualifications of the personnel working in the field. That's something the auditor took the time to recognize in his report, and he made a suggestion that perhaps by bringing those regulatory functions together, you might have a more effective regulatory system. That is something the Electrical Safety Authority and ourselves have been consulting with the industry on, and I think we have the support of the two large trade associations and the union.

**The Chair:** Mr Mauro, how long is your question? Is it short?

**Mr Mauro:** It's very short, actually.

**The Chair:** OK. Go ahead.

**Mr Mauro:** I just wanted to clarify that it's accurate that the Provincial Auditor cannot audit the delegated authorities.

**Mr Dowler:** That's correct. The Audit Act does not extend to cover the delegated authorities.

**Mr Mauro:** Thank you.

**Mr Bisson:** Is there somebody here from TSSA? I have a question on regulation.

**Mr Dowler:** If you'd like, you can start with us, and if we get—

**Mr Bisson:** That's fine. This happened to me the other day. I was meeting with a gentleman who operates a trailer park; you know, camping. You've got a camper and you go park at his trailer park and you go there with your family and do whatever. He was telling me that apparently a new regulation for water slides has come into effect. A water slide is basically a slide with water going down—nothing too complicated. The issue is that according to this regulation, you have to have a particular certification to operate the water slide, which is somewhat onerous for an operator like that who basically has a water slide at a lake for kids and adults, who go down with lifeguards. I'm just wondering under what process that particular regulation was developed.

I'll give you the regulation number, if that's helpful. I've just got to find it in my notes. That's the wonderful thing about taking notes; it's somewhere in my book. I'll let you start answering as I look for the regulation number.

**Mr Dowler:** We have the regulation. It's under amusement devices.

**Mr Bisson:** It seems kind of onerous for something as simple as a water slide.

**Mr Dowler:** We can always take a look at the specific nature of the complaint. Basically, TSSA has put in place, under its responsibility for regulating amusement devices, new provisions that do affect water slides. They have seen some incidents in this area and their thought is to always try to make sure they are responding with appropriate safety standards to protect people from being injured. They have also put in place—and this may be what you are referring to—a mandatory training program for all amusement device operators. That's relating to some root cause analysis they did which indicated that if the operator, the person loading kids on to the ride, had had a better understanding of how to operate the ride safely, certain incidents could have been avoided.

But if there are issues coming forward from constituents—and this is always an open offer—where perhaps the business community is suggesting that certain regulations are excessive or not applicable to a certain sector or that perhaps the scope of the regulation could be more appropriately be directed to larger installations or different installations, that type of feedback is useful for us and the TSSA.

**Mr Bisson:** I'm interested in two parts of this. By the way, the regulation number is 187/03, so it was done last year. I'm wondering how we develop a rationale for regulation. I think all of us will agree that there is really good cause for regulation in some of those areas. We want a person operating some sort of amusement ride that has a certain element of risk to operate it in a way that it's inspected, so we know it's safe and the people operating it are doing so in a safe manner. But sometimes we tend to go a little bit further with those regulations than was originally intended. I just wonder what process we are now using to develop regulations.

That's not to say, Chair, that we did a better job developing regulations when it was with the ministry,

which it still is. But you probably have the same view as I do. I get somewhat frustrated sometimes. With good intentions, we develop a regulation to prevent an injury based on a coroner's inquest—and we all understand why we do these things—but we go a bit overboard. I'm just wondering, with this particular regulation, how we came to the rationale. How was that developed?

**Ms Shenstone:** The TSSA comes forward to us with recommendations for regulation changes. It uses a consultative process with its advisory committees. It has an advisory committee for each one of its sectors, so it has one for amusement devices. In addition to its general advisory committee, it also has a technical committee composed of people in its industry who will present issues they're facing in the industry. The TSSA also uses its risk assessment model. This is why the statistics it collects and reports on and its preventive measures are so important: that it watches what's happening out there. That's the process it uses when it comes forward to government with recommendations for changes.

**Mr Bisson:** Based on incidents out there, they'll basically come with some sort of recommendation for regulation, but you guys will draft it up in the end. You do the actual drafting, not them, if I understand.

Let me just get to this particular case. On this particular regulation 187/03, this operator is an elderly gentleman who's been operating his business for some years. He's about to retire in a year or two. He's at the point where he's going to have to shut down that slide because he can't meet the requirements of the regulation, for two reasons. One is that he can't read and write, so he has no capacity to do it. So I ask the first question: Isn't there any ability to test people who are not literate? I think we need to think about that. That's my first question on that particular regulation: Is there some mechanism to test somebody who is not literate, some sort of oral exam or something we can do? There is still a large section of our population, quite frankly, unbeknownst to many people, who don't have the literacy skills to do these things.

The bigger thing is that I sat there and listened to his story and read the documentation he provided me. It was clear to me, as I was reading the document, that in fact there probably is good need for regulation within that particular industry, but I fail to see where the regulation on a water slide—it's a slide with a pump with water. There's a pretty onerous thing the operator has to go through, and I'm just wondering if there's any flexibility in all of that.

The last point: In fairness, I did call the TSSA. I just met with this guy February 10, which would have been Thursday or Friday. I put a couple of calls into the TSSA and they actually did call me back; unfortunately, we have been playing phone tag. I'm not sure if it was you, because I called the director. No? OK. I normally call the director. In fairness to the TSSA, they did respond. Unfortunately, I have not had a chance since they called back on Friday to get back to them. Today is my chance. Two birds with one stone.

The questions: Is there any ability for those who are unable to read and write to do an oral exam? Is there any way of looking at how onerous a regulation is when it doesn't make a lot of sense?

**Ms Shenstone:** We can ask the TSSA about testing people when they are not literate and we can follow up on that on your behalf. In terms of looking at regulations and whether they are onerous or not, it is an analysis we all do when a regulation comes forward. But the TSSA would also be wanting to make sure a water slide, for instance, is designed properly, that the curvature of the slide part, given the speed, given the weight of people going down it—

**Mr Bisson:** The more vertical you can get, the more fun it is.

**Ms Shenstone:** They would also be looking at how many people—you don't want two people going side by side bonking their heads together as they go whipping around a corner. The TSSA would be looking at the design and how it's maintained; it's how it's installed.

**Mr Bisson:** On this specific case, I'll actually talk to the person from the TSSA away from this committee. It's a better use of time. But from the political perspective and the process perspective, it just seems to me—this is probably more directed toward regs and private bills. It's just a very quick comment. Regs and private bills has never done as good a job as it should, in my view, as a legislative committee of actually looking at these types of regulations. We need a much better mechanism to make sure, when we do regulations, that they do stand up to some sort of common sense. Pardon the term, Norm; I had to steal that from your vocabulary of a long time ago. Anyway, I just raise that. OK. You've answered the question I had on that.

Just moving away from the TSSA for a second—no, I just remembered. I have some people from the Hearst area who are actually livid over the lack of French-language services for the TSSA. You probably know some of the complaints I'm talking about. What kind of steps does the ministry take to make sure that all of these delegated administrative authorities actually offer services in French? I've got Collège Boréal, which is a francophone college in northern Ontario, which is beside itself when it comes to some of the testing because it can only be done in English.

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**M<sup>me</sup> Shenstone:** Voudriez-vous que je vous réponde en français?

**M. Bisson:** Madame, c'est beaucoup plus—oui.

**M<sup>me</sup> Shenstone:** Les « delegated administrative authorities » ne sont pas assujetties à la Loi sur les services en français. Par contre, nous les obligeons à nous expliquer qu'ils ont un plan de prestation de services en français. Par rapport au testing en général, la TSSA pourrait négocier ou discuter avec la personne en question comment répondre aux besoins de cette personne dans des cas spécifiques.

**M. Bisson:** Est-ce que ce serait approprié de demander à la madame de la TSSA de venir répondre à une question spécifique?

**Ms Shenstone:** Margaret, would you feel comfortable answering this one around the provision of services in French and administering tests in French to unilingual French-speaking individuals?

**Mr Bisson:** Just for the committee, I don't know if the other committee members have gotten the same complaint, but I've certainly—please step up. As you're walking forward, I'll just put the question forward. There are a couple of issues.

Collège Boréal is the francophone college in my area. I don't know if Cité des Jeunes has the same problem at the other end. Often, when it comes to certifying particular people in, I wouldn't say trades, but in some of the licences that are necessary under TSSA, they've complained a number of times about the inability to test in French. Mind you, we've written a number of letters about this and we've complained about it, and I haven't heard anything in the last year or so. I'm wondering, have you guys addressed that?

**Ms Margaret Kelch:** Just for record purposes, my name is Margaret Kelch, president and CEO of TSSA. Thank you, Mr Bisson, for the question. On two fronts: I'm not a bilingually engaged individual, but I think what Mary said is that the administrative authorities are not legally bound by the French-language services legislation of the province. What we have done at TSSA, however, is to ensure that wherever French-language services are required by our clients, we are in fact providing them. I'm very aware—

**Mr Bisson:** Of Collège Boréal?

**Ms Kelch:** Yes—that we've had some issues at the college to which you refer. We also found that there weren't in fact materials available in the French language because many of these tests are international and English-based. The challenge we have is that the individuals who actually carry out that responsibility in the province are going to have to do it in English.

**Mr Bisson:** We could have an argument on that, but that's not your argument.

**Ms Kelch:** What we have done is to ensure that for testing purposes, to the extent that we are able, we provide those tests with an interpreter present and ensure that that is in fact amenable to the client who requires the French-language service.

**Mr Bisson:** That's where I was going, because that's what we recommended when they said to us that all the learning materials and all that are in English. Some people, because they go to college in Ontario—we do have French colleges—do all of their training in French and are not comfortable in the English language. Initially it was kind of an odd situation. You can come as an Italian Canadian and ask for an Italian translator to do the English exam, but you couldn't ask for a French translator to do the English exam from Ontario. I take it we've resolved that.

**Ms Kelch:** We addressed that issue directly. Our larger issue, though, and it has been referred to several times today, is that our responsibility is to ensure that public safety is protected. We need to ensure that that individual in fact can carry out their responsibilities in the English language in terms of understanding the code. The updates are done in English, the rules are in English, so we need to assure ourselves that the individual can actually carry out their responsibilities.

**Mr Bisson:** I'd be very careful about that, because I'm not too sure how that squares up against the charter. You have the same situation in Quebec, where an English-speaking electrician, if we brought that to the fullness of the logic, couldn't operate in the province of Quebec because people wouldn't understand what the hell you had done. The reality is that if I learn how to be an electrician in Portuguese, English or French, I'm just as capable an electrician. The issue then becomes, am I able to interpret the code book, which is a whole other issue. I just caution you not to go any further, because I have a very different view of this, and we're not going to be combative at this committee.

**Ms Kelch:** I think, Mr Chair, that would be a discussion we would want to have elsewhere.

**Mr Bisson:** We'll have that privately. Very good. I think that's all I had for the TSSA.

No. Just before you go away, on this particular issue of 187—oh no, we'll talk about that privately. It's better to do it privately after.

**Ms Kelch:** I'm happy to take those observations offline, and we'll assure you and your customer, or your client, that we'll meet their needs.

**Mr Bisson:** We call them constituents.

**The Chair:** Mr Bisson, we are scheduled to wrap up at 3 o'clock, if possible.

**Mr Bisson:** Oh, really?

**The Chair:** So I'd ask you to—

**Mr Bisson:** OK. I've got a number of other questions, but if I had to pick one, it would be a very quick one. Do we have to wrap up at 3, or can we do another day on this committee?

**The Chair:** No, we don't, but that's generally what we have done, respecting everybody's time in this.

**Mr Bisson:** I'm just saying, are we done with this ministry after today?

**The Chair:** Yes. Well, we're not done with them, because they're going to respond to us. We can ask them questions in writing. Our first consideration of the material they forward to us will be after March 22, when the House reconvenes.

**Mr Bisson:** Then, I'm sure they'll have other questions.

I'm going to make a very quick question. Are you responsible for lottery rules and all that kind of stuff or does that still stay with the lottery corporation? I remembered that inside the auditor's report there was some comment on gaming.

**Ms Shenstone:** We're responsible for the enforcement and regulation around how lotteries are conducted, and the Ontario Lottery and Gaming Corp is responsible for how the casinos administer.

**Mr Bisson:** So would you do up the regulation on that, like all the new gaming regulations about how you run a lottery as a charity and all that stuff? Oh, I'd love to have another day just on that.

**Ms Shenstone:** Yes. That would be under the aegis of the Alcohol and Gaming Commission of Ontario.

*Interjection.*

**Mr Bisson:** No, no. Did I misunderstand? She's saying it's not your ministry.

**Ms Shenstone:** I'm not sure which regulations you're referring to.

**Mr Bisson:** If you're a charitable organization and you want to run a lottery, is it your ministry?

**Ms Shenstone:** Yes.

**Mr Bisson:** That's what I thought.

*Interjection.*

**Ms Shenstone:** Right.

**Mr Bisson:** Yes. I'm just saying I'd like to spend a whole day on that.

**The Chair:** That would be a good spot for the estimates committee to take up.

**Mr Bisson:** There's another way of dealing with it. OK. Never mind.

*Interjection.*

**Mr Bisson:** Listen, I haven't been able to pick a triactor.

*Interruption.*

**Mr Bisson:** You see, I can't win a triactor. That thing fell. My horse died coming over the line.

**The Chair:** Are you finished, Mr Bisson?

**Mr Bisson:** Yes. I'm sure other people have questions.

**The Chair:** Thank you very much. For Mr Bisson and other members who haven't been on the committee before, it's the practice of the committee to stay a few minutes after the delegation leaves, and we try to give the researcher some indication of the directions we might want them to go in the report.

I'd like to thank you, Deputy, and others for your attendance here today. If you have any additional information to pass to us, then I invite you to write me. I will share that with the committee and it will become part of our deliberations when writing the report.

*The committee continued in closed session at 1458.*



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Mr Andrew Cheung, director, justice and regulatory portfolio,  
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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 17 February 2004

# Journal des débats (Hansard)

Mardi 17 février 2004

### Standing committee on public accounts

2003 Annual Report,  
Provincial Auditor:  
Ministry of Economic  
Development and Trade

### Comité permanent des comptes publics

Rapport annuel 2003  
Vérificateur provincial :  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Tuesday 17 February 2004

Mardi 17 février 2004

*The committee met at 1048 in committee room 1, following a closed session.*

2003 ANNUAL REPORT,  
PROVINCIAL AUDITOR  
MINISTRY OF ECONOMIC  
DEVELOPMENT AND TRADE

Consideration of section 3.07, science and technology.

**The Chair (Mr Norman W. Sterling):** Mr Black, welcome to the public accounts committee. Congratulations on your appointment as Deputy Minister of MEDT, I guess it is.

The microphones come on automatically. The button is only to push them off. If you could pull the microphone in front of you when you're speaking so everyone can hear you properly, we'd appreciate it.

We normally start out by allowing the deputy to have some opening remarks and then we go to questions from the committee. We adjourn at 12 and reconvene at 1. We have normally taken to about 3 o'clock on each of the delegations so far. Mr Black, if you'd like to introduce the people who are with you and say some opening remarks.

**Mr Don Black:** Absolutely. Thanks for those kind words, Chair. With me today is Dr Tim McTiernan, who is the assistant deputy minister in charge of the science and technology division. I also have Diane Frith, acting assistant deputy minister of our corporate services and field division. If it pleases, I can have five or six minutes of comments and then turn it over to Dr McTiernan to do a couple of minutes as well. Is that—

**The Chair:** Sure, that's fine.

**Mr Black:** OK. As the Chair pointed out, my name is Don Black; I'm the Deputy Minister of Economic Development and Trade. I've introduced my two colleagues here.

I'd like to begin by saying thanks for the opportunity to respond to the 2003 Provincial Auditor's report, which raised a number of points and made some very useful recommendations regarding the ministry's science and tech support and investment programs.

Before we get into some of the recommendations, which I'll leave to Dr McTiernan, the auditor made some points with respect to the science and tech programs and I'd like to address head-on the issue of access to files and records.

We take these comments by the auditor pretty seriously and I want to clearly confirm our commitment to improve our responsiveness to the auditor's requests in future.

The ministry followed standard protocols and there was no intent or effort made to delay or withhold the information requested. I know the ministry tried very hard to meet all requests. Frankly, some of the internal processes we followed and the breadth of the requests led to some of those delays, however unintended.

Be that as I may, I spoke to Mr McCarter on Friday and gave him my assurances that we will do better in future. We have modified and streamlined our processes to make sure we're able to meet any future requests more quickly and more fully.

The past few years have seen an increasing recognition and emphasis of the importance of science, tech and innovation in enhancing our economy, creating good jobs with above-average wages and providing a higher quality of life for all Ontarians.

Innovation is recognized as vital to this province being globally competitive in the knowledge-based economy.

This emphasis on innovation is not just something happening here in Ontario. We need only look at what the federal government is doing and what many other jurisdictions around the globe are doing.

Ontario's recognition of the importance of innovation has resulted in the implementation of a number of significant programs that support research in our post-secondary institutions and hospitals, recognize and support excellent researchers, and facilitate the commercialization of research to provide new products, new services, new businesses and new jobs.

These programs have been welcomed by the research community and businesses and have leveraged significant investment in innovation in Ontario from the federal government as well as the private sector. These investments are beginning to enhance Ontario's capacity to innovate, so most would agree that the objectives of these programs, and the results they are delivering, are laudable.

That said, in the Provincial Auditor's report of 2003 the auditor identified a number of issues regarding the structure, administration and management of these programs and made a number of very useful and helpful suggestions for improvement. The ministry welcomes the auditor's comments and recommendations.

Let me confirm that we are in the process of reviewing all our programs and are using these recommendations to improve our policies and administrative procedures to make them more focused, more transparent, and aligned with the priorities of the current government.

We are taking concrete action to improve the operation of the ministry's programs to ensure they are delivered in a cost-effective, fair and accountable manner, one that results in good value for money for the people of Ontario.

As we continue to elaborate our science and tech strategy, we'll be modifying our programs to enhance their impact and relevance as well as improving our program delivery processes. Our guides will be the Provincial Auditor's recommendations and best practices in support for research, innovation and commercialization not just in Canada, but around the world.

We will continue to work collaboratively with the federal government on the innovation agenda to maximize complementarity, to avoid wasteful duplication, and to leverage even more investment from the federal government in science and tech in Ontario.

We can build a stronger science and technology base in our economy by working with all our partners—the federal government, the private sector, other institutions—with a focus on enhancing the innovation system from research to the commercialization of research discoveries; facilitating the participation of small and medium-sized enterprises in the innovation system; supporting the development of talented researchers and knowledge workers needed to support an innovation economy; and promoting the development of research-intensive clusters.

By working with our partners, the ministry's objective is to enhance Ontario's research, innovation and commercialization capacity. This will contribute to our economic growth and diversification through the creation of new companies and new high-value jobs, with consequent improvement in the quality of life in Ontario.

In conclusion, I'd like to stress that the ministry's programs have had a significant impact on Ontario's innovation capacity; the ministry is committed to delivering and managing all of its science and tech programs in a cost-effective, fair and accountable manner, and providing taxpayers with value for money; and, by incorporating the Provincial Auditor's recommendations, we will improve how these programs work, and ultimately demonstrate an enhanced impact of these programs.

Our objective, like the Provincial Auditor's, is to enhance the efficiency, impact, management and accountability of these programs.

I'd like to conclude by thanking you for this opportunity to provide a little bit of an update on where we are and how we're going to follow through on what the Provincial Auditor has said would be important for our programs.

Having said that, I'll turn it over for a little more detailed commentary to Dr McTiernan, who as I mentioned

before is the ADM of our science and technology division. If that's suitable to everybody, we'll do that.

**Dr Tim McTiernan:** I'm pleased to be here to report on the progress we've made in implementing the Provincial Auditor's recommendations on our science and technology programs and in speaking to progress on implementing the recommendations. I'll be following the narrative track in the Provincial Auditor's report and dealing with those recommendations as they come up, in sequence.

We acknowledge the concerns expressed by the auditor and view the auditor's recommendations as a strong framework within which to enhance the accountability of our programs as we move forward with the science and technology agenda in Ontario. We are now, as a division and as a ministry, actively engaged in a variety of initiatives to improve and sharpen our policies and administrative procedures, to enhance program transparency, efficiency and accountability.

With respect to governance and accountability, I'd like to address the auditor's concerns regarding the Ontario Innovation Trust. The Ontario Innovation Trust was created in 1999 as an arm's-length organization to support investments in Ontario's research infrastructure at universities, colleges, hospitals and not-for-profit research institutes. The trust was created primarily to leverage federal government investments in research infrastructure through the Canada Foundation for Innovation. The trust receives administrative support from the Innovation Institute of Ontario, a not-for-profit organization, and to date it has committed \$708 million to over 1,000 projects at 45 institutions across the province.

The auditor's report was important in helping us to address concerns around governance and accountability arising from the arm's-length structure of the trust. The trust deed limits the capacity of the ministry to work directly with the Ontario Innovation Trust. However, we have met with the board on the issues raised by the Provincial Auditor and the board has agreed to comprehensively address transparency and accountability measures in a new way.

I'm pleased to say that the Ontario Innovation Trust has agreed to adopt the same accountability processes as transfer payment agencies with respect to accountability issues. The innovation trust has committed to tabling annual financial statements and annual reports to the Legislature, appearing before legislative committees, and making their records available to the Provincial Auditor for review. We are currently working on an accountability framework to formalize these arrangements, with a target date for completion no later than July 2004. The framework will be set out in a memorandum of understanding between the innovation trust board and the ministry.

In the matter of updating the three government appointments to the seven-member innovation trust board, the ministry is in the process of preparing the documentation for confirming three new government order-in-council appointments.

The Provincial Auditor's concerns around the management of the Ontario research and development challenge fund have provided strong direction on strengthening accountability processes for that program. The research and development challenge fund funds operating costs of world-class research—specifically research that is relevant to applications in the health, business and industrial sectors. The government's almost \$480-million research and development challenge fund commitment in research has leveraged \$1.2 billion from research institutions and their business partners.

The Innovation Institute of Ontario is under contract by the ministry to support the administrative function of this fund. We are working with the ORDCF board to update the memorandum of understanding, which was originally signed on March 2, 1998, by the five ministries involved in the establishment of the research and development challenge fund—currently four ministries, with the realignment of science and technology and the Ministry of Economic Development and Trade.

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The framework for this new memorandum of understanding was developed in December 2003 and is currently being refined in draft form. It will include, among other matters, the designation of the ministry as the lead ministry in managing the program. It will clarify program objectives and define the respective roles and responsibilities of the parties to the memorandum of understanding, the Ministry of Economic Development and Trade and the board. Work on the new memorandum of understanding will be complete by the end of this fiscal year, and already some of the provisions included in the memorandum of understanding are being implemented.

With respect to project selection, the Provincial Auditor recommended improvements in the research and development challenge fund project selection process related to document retention, verification of program eligibility and timely review of applications. We're working closely with the Innovation Institute of Ontario to address these issues and we expect to have this work implemented by the end of March.

I'd now like to turn to a discussion of administrative procedures for the Ontario research performance fund and to address the recommendations of the Provincial Auditor. In keeping with the recommendations of the Provincial Auditor, this \$32-million annual fund supports the indirect costs of research at Ontario institutions. It was set up following a 1999 report, *Growing Ontario's Innovation System: The Strategic Role of University Research*, by the then-VP of research and international relations at the University of Toronto. A key recommendation was that government establish a research performance fund to resource universities for the indirect costs associated with increasing their research capacity. The level of support was benchmarked at 40% of the total direct research costs.

I'm pleased to say that implementation of the recommendations regarding the administration of this program is complete, except for one activity which is still

in the final stages of being amended. These include recommendations to retain confirmation letters, more clearly verify grant amounts and have established deadlines for confirmation of information by participating ministries and institutions, with payments.

We are also finalizing an administrative procedures manual—this is the final item to be completed—so that we can document internal procedures and payment processing for the Ontario research performance fund grants. This will be complete by this March, with a plain language text for general use.

The Premier's Research Excellence Awards and the Premier's Platinum Medal for Research Excellence recognize the contributions of Ontario's finest researchers who create the knowledge that fuels innovation and high-quality jobs. Both of these programs are prize programs which aim to recognize and reward excellence, and, in the case of the Premier's Research Excellence Awards, to stimulate young researchers early in their careers who have acknowledged potential.

With respect to this program, the auditor made recommendations on administrative procedures regarding record-keeping and document retention during the award selection process which are being acted upon. We are also revising program information to ensure that all potential applicants are fully informed as to the evaluation and selection criteria and procedures and that these processes are transparent. We met with the Premier's Research Excellence Awards advisory board in January and will work closely with the board to implement the program in accordance with these revised administrative procedures.

The ministry is updating the memorandum of understanding it has with the Premier's Research Excellence Awards board to reflect the board's responsibilities with respect to the Premier's Platinum Medal for Research Excellence awards. The ministry is committed to having new administrative policies and procedures, including rigorous observance of deadlines, transparency of nomination review and award selection and an enhanced document retention schedule in place before the next round of the Premier's Platinum Medal for Research Excellence.

With respect to program monitoring, we are addressing the auditor's recommendation that a monitoring mechanism is needed to confirm that Ontario research and development challenge fund grants are used for the purposes intended and that project performance is reported on and monitored. To accomplish this, we are working with the Innovation Institute of Ontario to update policies and procedures for financial and program reporting and for follow-up to take corrective action when necessary. For example, we have received and are following up on a quarterly report on those Ontario research and development challenge fund projects that have not received funds in six months because of delays in project implementation. Mitigation measures are being put in place to address undue delays in project implementation.

The Ontario centres of excellence program plays a key role in helping Ontario companies, especially small and

medium enterprises, take full advantage of the commercial application and potential of research. In order to enhance the strategic alignment of the centres' programs to government economic and innovation policies, we have worked with the existing centres of excellence to restructure the governance of the program through the creation of a single organization, Ontario Centres of Excellence Inc, through which the four current centres will be operated.

As the ministry finalizes its new contract for the operations of the centre program, we will incorporate the auditor's recommendations to ensure that appropriate reporting, program monitoring and accountability measures are not only put in place but also observed. The new contract, almost complete, will be ready for execution by the end of March. Once the contract is finalized, we will set up a report tracking system, with staff reviewing and analyzing received reports.

On conflict of interest, the ministry has endeavoured to address conflict-of-interest issues within all of its current programs. However, we acknowledge the auditor's concern that we need to do so with enhanced and systematic rigour.

We have taken steps to strengthen this focus by establishing a working committee to review existing conflict-of-interest provisions and develop consistent conflict-of-interest policies that apply to the decision and advisory processes in all of our transfer payment programs. We expect updated guidelines to be prepared in time to annex to the new memorandum of understanding with the Ontario research and development challenge fund board. In the meantime, increased attention is being paid to the management of conflict-of-interest issues during board meetings.

With respect to the benefits of research projects, as recommended by the auditor, we will work to develop consistent principles with respect to intellectual property rights across all science and technology programs. To this end, a new working committee will review policies on intellectual property rights and determine the best way to optimize ministry objectives as we work with a broad array of research institutions that have their own evolving intellectual property rights policies and procedures.

Criteria to assess the programs' success in meeting these objectives will be put in place, cognizant of the significant ongoing global debate about the role of intellectual property policy in enabling early commercialization of research discoveries. The approach taken in the development of intellectual property policy options will be consistent with similar programs in competitor jurisdictions in Canada and North America. The target date for completion is the end of this year.

We are refining our focus on private sector contributions for the Ontario research and development challenge fund to more fully track and document the private sector partnership contributions to research programs. This will serve an accountability objective. More importantly, it will better document the role and involvement of the private sector in the research-based innovation and commercialization agenda.

As part of this process, we will develop policies to confirm contributions and ensure that there is independent valuation of in-kind contributions of a designated material value. I expect this to be finished also by the end of this year.

With respect to program financial and administrative controls, we are enhancing financial and administrative controls in order to achieve program efficiencies. Over the past few years, the number and size of our science and technology programs have increased significantly. Because of the large number of complex programs, and in the context of incorporating the auditor's recommendations for enhanced accountability and transparency, we are developing a number of initiatives to improve program delivery and monitoring.

For example, we are reviewing program mandates and delivery mechanisms as well as the administrative processes for the Ontario research and development challenge fund, the Premier's Research Excellence Awards, platinum awards, centres of excellence program and the Ontario research performance fund, among other science and technology programs. We are developing explicit and transparent procedures and policies, a suite of documents, in the areas of conflict of interest, intellectual property and valuation processes for in-kind contributions. Finally, we are assessing the allocation of staffing and the introduction of enhanced technological solutions to allow us to more effectively manage our programs.

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We will continue to refine our contractual and working relationship with the Innovation Institute of Ontario in the process.

Measuring and reporting on program effectiveness: The science and technology division contributes to the mandate of the ministry by facilitating a culture of innovation, investing in people and infrastructure to create knowledge, add to high-value jobs and create a climate that fosters commercialization of research and builds strong economic clusters.

The division is actively engaged in supporting research, commercialization, and in growing the life sciences and ICT clusters in Ontario. We accept the auditor's observation that clear direction for program development and delivery, with clearly stated goals, is an important guide to help us better achieve our mandate.

We are working on the elaboration of a more detailed strategic plan for our science and technology programs that will define the relationship between research and development activities and the ministry's overall economic development mandate. This new strategy will be set out and incorporated into the ministry's strategic results-based planning process currently underway. We are committed to measuring the contribution our programs make in promoting the growth of high-paying jobs and globally competitive clusters in Ontario.

In that context, we are taking steps to improve our accountability for the use of public funds by not only reviewing our performance measures as part of our overall review of science and technology programs but

by endeavouring to define and refine meaningful performance measures which allow us to gauge the true impact of our initiatives and investments.

In conclusion, the ministry has made about 30 commitments in response to recommendations made by the Ontario Provincial Auditor. To recap the key areas, we've taken immediate action to address governance and accountability issues. We're refining an overall strategy for the ministry to use as a framework for future programs. We've dedicated resources to enhance and update procedures, administrative practices, project tracking and monitoring. We're updating or developing policy frameworks regarding intellectual property, conflict of interest and performance measurement.

**Mr Tony C. Wong (Markham):** I will start by agreeing with the opening remarks of Mr Black that science and technology innovation programming is certainly something very important for the economic development and well-being of Ontario companies. But when we look at some of the findings and conclusions of the Provincial Auditor—no strategic plan for S&T programming; no business case; no accountability for OIT; of course no guidelines to avoid conflict of interest; no guidelines for safeguarding the ownership of intellectual property, where appropriate; no performance measurements etc—it certainly is extremely disappointing that these aspects were not addressed previously. In my mind, it's the former government that obviously dropped the ball.

I look at the summary of recommendations and current status of MEDT action, and I want to thank you and your staff, Mr Black, for preparing this document, because it really helps. I was listening carefully to Dr McTiernan's presentation.

My question to you, Mr Black, is that I understand that, according to page 8 of this summary, the strategic plan will not be completed until March of next year and some policies for conflict of interest, selection criteria and monitoring guidelines will be developed prior to that date. I read dates of March for some systems and processes; November, I believe, for conflict-of-interest guidelines. How are we going to deal with the ongoing aspects? Life is not going to come to a full stop before these policies and guidelines are developed, so how are we going to deal with them, Mr Black?

**Mr Black:** That's a very good point, and if I had it to do over again, I would probably change the dates in that memorandum I sent over. You're absolutely right that March 2005 is too far off on the horizon to wait for a strategic plan, a strategic overview for the science and tech programs.

Some of the other things we've talked about in terms of meeting deadlines—December 31 and March 31 of this year—we're actually going to try to beat those. Where we haven't been delayed, we're very close to finalizing a couple of those. I take your point; we are actually going to try to do much better than those timelines suggest. Certainly the government, as folks here would have heard, is embarking on a results-based

budgeting exercise that essentially tries to put an acetate over the programs and policies across the government to determine whether or not they're actually delivering the way they should be. This will be one of the first ones that the government actually looks at. Certainly, in our ministry, we are embarking on that to make sure we're aligned with the kind of results the government expects and, frankly, the taxpayers of Ontario expect. Your point is taken, and we're going to do better than those timelines suggest.

**Mr Wong:** Thank you, Mr Black. I'm glad to hear that you and your staff will be making strong and active efforts to move these deadlines up because I really want to impress upon you and your staff that time is of the essence, that the Provincial Auditor's report has been out for some time now. I know you are new on the job, but I really hope that you would put this as one of your top priorities.

**The Chair:** I invite you, Mr Black, to send the committee your new target dates.

**Mr Black:** Thanks, Chair.

**Mr Toby Barrett (Haldimand-Norfolk-Brant):** I have a general question on the control function or evaluation. Where does responsibility lie, or what is the rough ratio between the ministry that is forwarding a government grant to a research organization or a hospital or a university as far as evaluation or justifying what's going on between the ministry and the organization that is spending the money? To what extent do they voluntarily monitor what they're doing, report back, send thank-you letters? What's the ratio here? Are we looking at all the responsibility lying with the ministry to chase down the use of the money?

**Mr Black:** I'll let Dr McTiernan answer.

**Dr McTiernan:** Sir, if I may, I think it's mixed. The practice has evolved over the last couple of years. I think there has been an assumption that the institutions in question will report as a matter of process because of the provisions and terms in their contracts for the projects. In many instances that is the case, but in some instances we've found that there are two sets of issues. There are delays in reporting and, when there's follow-up, the institutions will say that it's because of the balance of work on the research initiatives taking precedence over administration. We've had to pay attention to tightening up administrative procedures in those regards.

In other instances, with the start-up of some of our programs, we've discovered that some of the partnership arrangements around which the projects are based take longer to consolidate. There are time delays associated with formalizing relationships between the researchers, their parent institutions and the private sector partners. That has led to delay in reporting. For those programs that have been working longer than others, the pattern of tighter time focus and stronger ministry engagement with ensuring accountability in reporting is met. The ministry has the responsibility to check and the institutions have the responsibility to keep the reporting timelines and formats to which they've committed.

**Mr Barrett:** Many of these organizations would have their own control function. People employed by these organizations that get a government grant still report within that organization. There would be annual reports. Oftentimes the institution would report to government one way or another. Do you feel these organizations are up to snuff as far as the resources that they dedicate to evaluation or the expertise that they have? Is there a danger of duplication where you've got a series of job descriptions—an evaluator, for example, in an organization doing exactly the same thing that the ministry would be doing on the same project?

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**Dr McTiernan:** I can't answer the latter question honestly. I think institutions are structured differently and they manage their reporting requirements differently, so there isn't a pattern one can speak to.

In terms of their general annual reporting, that's largely done to the ministry directly involved in funding, and in most instances it's the training, colleges and universities ministry. So, to the extent that research initiatives are captured in those annual reports, they would be reports that are directed to government and the Legislature through a ministry other than MEDT.

**Mr Barrett:** Just a final, brief question: When the money flows to various organizations, is there a certain percentage held back as an incentive for them to report back on either process or results?

**Dr McTiernan:** Yes, that does happen.

**Mr Barrett:** On occasion or in every case?

**Dr McTiernan:** The flow of money—if I could just confirm with one of my colleagues before I answer you more directly.

Yes, I've been assured that in virtually every case there's a holdback to ensure reporting.

**Mr Barrett:** Have there been cases where the full 100% has not been forwarded just because evaluation or monitoring reports didn't come in?

**Dr McTiernan:** Excuse me just one moment.

Yes, we have held back money for non-reporting.

**Mr David Zimmer (Willowdale):** First of all, let me commend you on your impressive governance commitments made as we move ahead. My question is a bit of a historical one. The science and technology program has been in place since April 1998. It has spent \$1.3 billion. Looking ahead, it has commitments totalling another \$4.3 billion. My sense in reading the auditor's report is that there are real governance concerns about how the program has been administered since 1998. They break down into oversight questions, compliance questions and accountability questions.

I think it's useful to look back historically, sort of a lessons-learned exercise. My general question is, given all the talent in that ministry—the administrators and scientists—what was there in the administrative culture, the governance culture going back to 1998 that permitted these governance issues to go into default in such a dramatic way? How did that happen? Because I think there are lessons to be learned there as you move forward

with your commitments. How did the absence of a governance culture take root and survive for five years until the auditor—and I say this with the greatest respect—sort of blew the whistle in 2003?

**Dr McTiernan:** That's a challenging question, sir, and a challenging one to answer. If I could do it perhaps overly simplistically: The focus was probably on the science at the expense of the administrative arrangements to support the program operation. The value of the Provincial Auditor's report is to sharpen everybody's attention on the need for active management of the accountability mechanisms. The pattern that emerges from the Provincial Auditor's report speaks to our obligation to actively attend to and manage the administrative processes as well as the development and implementation of an array of programs that were put in place in a fairly short period of time.

**Mr Zimmer:** Just following up, just to drill into it a little more, what are a couple of the things historically, going back to 1998, that in hindsight you would have done differently? If you could wind the clock back to 1998 and you're setting up the science and technology program, what would you have done differently to ensure good governance? What are a couple of the things that you would have done differently?

**Dr McTiernan:** Speaking from a divisional perspective, having a coherently elaborated framework in which the relationships between the programs were clearly defined; having administrative processes and procedures that were articulated in policy and paper as much as in administrative practice; having an allocation of resources that paid attention to the administrative and accountability measures associated with the programs as much as with the outreach; and working with the research community and the stakeholder community.

**Mr Zimmer:** I think you hit on something. Since 1990, it has been very easy to be seduced, if you will, by the science of what you were doing, and the administration of the program sort of falls into second place. Are you confident that there will be a proper balance between good administrative practices and the seduction that science can sometimes have?

**Dr McTiernan:** Personally, absolutely. Working with the Provincial Auditor's staff as much as addressing the recommendations of the Provincial Auditor's report was an interesting object lesson in attention to administrative matters. I think the period of time in which staff worked actively with us has changed the operating environment and culture quite a bit. I think working now in a context where the science and technology agenda is clearly captured in an economic development framework and where there's a focus on the results of research—a focus that has grown over the last few years as programs have initiated and we look at commercialization and the impact of research and development on cluster development—it changes the context and the approach to program administration but also to program design and program focus.

**Mr Zimmer:** Do you plan on having some sort of over-boss, if I can use that expression, in place on the

program who can ride herd much the way the auditor has ridden herd in the last while, who can step in and say, "Look, this is not up to good governance models. This is not happening. Pay attention here. You're letting science run this and not administration"?"

**Mr Black:** If I might answer that one, I think that's my job, actually, as deputy of the ministry. As Dr McTiernan said, the comments around not the science but the paperwork, following the money, making sure that all the pieces join together so that we know exactly where every bit is at every point in time—that's my job and that's my commitment to the minister to do that.

**The Chair:** With regard to Mr Zimmer's question, the numbers he was using were on page 164 of the auditor's report, the \$1.326 billion and the \$4.340 billion. Do you have any breakdowns with regard to where those commitments or those monies have gone? As I understand it, ministry funding is \$1.326 billion, but the Innovation Trust still had, at the end of March 2002, \$500 million, so that, notwithstanding the \$1.326 billion, it hasn't really been spent, in a sense.

Could you perhaps provide the committee with a breakdown of where this money has been committed and spent? Not now—I realize that that will require a little bit of work—but if you could do that in writing, I would appreciate it.

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**Mr Black:** Yes. We would be happy to do that, Chair.

**Mr Gilles Bisson (Timmins-James Bay):** Thank you. Welcome. Let me just say up front that I think the work you do in your ministry is probably some of the most important work we do in government when it comes to making sure our economy, at the end of the day, is able to be involved in the kinds of things that it needs to do in order to go to growth.

However, I am, as probably you are, pretty unhappy with the auditor's conclusions. I take it you're not too happy yourselves and don't like being here answering these questions, but nonetheless I have a couple of questions to ask you. How in heck did you ever get into this position of setting up trusts without oversight? Did you ever advise the government that maybe there should be oversight?

**Mr Black:** If I can take that on at a very high level, there was a decision taken at that moment in time back in—1998?

**Dr McTiernan:** Yes.

**Mr Black:** —to structure the trust the way it was structured through the government channels at that point. It's a tough question for us to take on.

**Mr Bisson:** I know. I just want you to know up front, I've got the greatest respect for the work that you do. As individuals, I think the people who work for the OPS are the most professional in the civil service. However, I have a hard time believing that a ministry of your calibre, with the type of people who work where you are, wouldn't have told the government of the day that this may be politically or ideologically—I understand what the government was trying to do. They were trying to set

up a way of being able to pick projects that was removed from government and was industry-driven to a certain extent, to put it in layman's terms. From a policy perspective, all fairness to the government, that is one way of doing things. They won the election; they had the right to do that.

I have been in government before. Having worked with you people at your ministry—because I know you do fine work—I find it hard to believe that you wouldn't have given the government some suggestions that they needed some kind of oversight. What I'm looking for is an answer to that question. Did the ministry advise the minister or the government of the day that, "Yes, we'll do what you tell us to do, Minister, but we advise you that there should be oversight"?

**Mr Black:** I hate to duck that one like I'm going to duck it, but I wasn't in the ministry at that time and I don't think Dr McTiernan was either, for that matter.

**The Chair:** In fairness, now, there was oversight, because three members of the board were government appointees. Presumably, they represented the government's interests.

**Mr Bisson:** Obviously, but Chair, this is my time for my questions.

**The Chair:** No, it's just that I don't think you should be misleading regarding what's happened.

**Mr Bisson:** I understand this might be somewhat sensitive. Chair, I understand. Listen, I've taken criticism from our time in government, and I didn't like it. I understand that. But who in this room worked in that ministry at the time this program was put together? Is there anybody here? Can I ask you some questions?

**Dr McTiernan:** Sir, to the extent that I understand, the initiative was done out of the Ministry of Energy, Science and Technology, and none of us at the table were in that ministry at the time.

**Mr Bisson:** That's convenient. Can you have anybody before this committee this afternoon who would have been here at the time it was structured? That's my first request.

**Mr Black:** We can certainly try.

**Mr Bisson:** All right, let's move on to the other questions.

I remember when this announcement was made, and quite frankly I'm quite happy with the direction. The program itself is not the problem. I think we can all agree as legislators that the money we invest in these types of activities pay back our economy and our people a hundredfold. That's not my argument. I just want to understand something. The commitment that you originally got, was that for 10 years, five years? The \$4.3 billion was for how long? I don't remember. I remember the announcement; I just don't remember how long it was.

**Dr McTiernan:** I believe the \$4.3 billion you're referring to is the cumulative commitments over the array of programs, some of which are 10 years, some of which are shorter than 10 years.

**Mr Bisson:** I'm trying to remember the announcement. I remember there was an announcement. It was

done as a multi-year thing, which I thought made some sense back then—if you can refresh my memory. For example, on the Ontario Innovation Trust, was that a five-year commitment, a 10-year commitment?

**Dr McTiernan:** Excuse me, sir, while I—

**Mr Bisson:** Yes, that's fine.

**Dr McTiernan:** I have no record of it having a timeline. It was created in 1999.

**Mr Bisson:** I think you've got an answer.

**Dr McTiernan:** It was 10 years.

**Mr Bisson:** It was. That's what I was trying to remember. OK. So just to refresh my memory, this \$750 million that we talk about was over a 10-year period, right?

**Dr McTiernan:** Yes.

**Mr Bisson:** That was the commitment. How did that flow—on request or was it cut off in 10 segments? How was that \$750 million devised?

**Dr McTiernan:** On request. There was an initial \$500-million commitment, and then that was augmented by an additional \$250 million in a later budget. The pattern of expenditures on the trust has ramped up over the years. In 1999-2000, for example, there were 119 project awards. It increased over the next couple of years.

**Mr Bisson:** But that's not my question. We're going somewhere different. The money got flowed when? How much money got flowed and when was it flowed to the trust?

**Dr McTiernan:** Oh, to the trust?

**Mr Bisson:** Yes.

**Dr McTiernan:** It was flowed in two lumps.

**Mr Bisson:** Two lumps: \$500 million and \$250 million. That has been done now?

**Dr McTiernan:** Yes.

**Mr Bisson:** All right, so now the government flows over \$750 million, puts it into a trust. Did you at any time have any concerns about not having any oversight over the Ontario Innovation Trust? That's a lot of money, for you and me put together. I'm not saying these people did something criminal or wrong; that's not my assertion here. However, my question is, at any time did the ministry feel that there needed to be a bit more oversight on the trust, considering the comments by the auditor that there was no process to hold that trust accountable? At one point did you guys advise the minister that maybe we should be doing something to make this more accountable?

**Dr McTiernan:** With the trust established, we had no direct legal means of influencing accountability. There was, as the Chair indicated, the involvement of three government appointees on the trust board and—

**Mr Bisson:** That's not my question. Listen, if I'm the government and I put my appointees, I think they're going to do what I ask them to do. That's not my question. Obviously from what the auditor said, there was no accountability for the money that was put in that trust. My question to you is, did the ministry at any time have any concern or reason for concern about that situation, or

did that all of a sudden become an issue when the auditor raised it?

**Mr Black:** Again, I'll just go back to the point that the government of the day made a decision to set up the trust at arm's length, which I think Dr McTiernan says essentially keeps us out of it. Are there concerns? I think those concerns that were raised by the Provincial Auditor are being addressed by some of the things the board has decided.

**Mr Bisson:** That ain't my question. Prior to the auditor raising this, did anybody in the ministry have any concern about \$750 million, in this example, sitting in a trust without any oversight?

**Mr Black:** I can't answer that question. I wasn't at the ministry then.

**Mr Bisson:** You are the most professional staff, I must say.

**Mr Black:** I appreciate that.

**Mr Bisson:** You guys are good. You're very good. However, I understand the position you're in, and I understand why you're being cautious in your approach to me. But I, as a taxpayer and a legislator, have a hard time believing that the ministry at no time indicated to the government that there probably was good reason to have some kind of oversight. Because even if nothing wrong happened—and I'm not saying there is. These are probably very legitimate expenses and everything was done properly. I don't know. The only thing is that you put \$750 million of taxpayers' money in a trust and the government doesn't have any oversight—I think that's reason for concern.

I go back to you and repeat this questioning. I'm going to let you think about it over lunch, because I'm going to come back to it after lunch. Did the ministry at any time indicate to the government that it probably would be a good idea when we set this thing up, first of all, to have some type of oversight, or at any time after was there a concern that there should be some form of oversight? Do you want to try to answer now or after lunch?

**Mr Black:** I might be able to take that on after a bite of food.

**Mr Bisson:** All right. Let's hope you have a good lunch.

Just another question: I take it that this is an accounting issue, or is it what I think it is? The auditor points out that in one particular example, a person who received money from the fund, the Ontario research performance fund, was overpaid by \$147,000; another one was underpaid by \$277,000. I take it that that's an accounting issue.

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**Dr McTiernan:** Yes.

**Mr Bisson:** I can't believe that anybody who was underpaid by \$277,000 wouldn't come knocking at your door.

**Dr McTiernan:** It was purely an administrative error, sir.

**Mr Bisson:** By the ministry or by the fund?

**Dr McTiernan:** By the ministry. I think you're referring to the research performance fund, which is a

program that is administered outside of the ministry. The error was with the ministry. The auditors caught it, thankfully, and pointed it out. It was corrected. It has also resulted in a new administrative procedure so that there's a double-check in place so the errors won't be repeated.

**Mr Bisson:** How many staff did you lose post-1995 when we were doing the government downsizing? Did you lose quite a bit of staff? About what numbers, roughly?

**Ms Diane Frith:** It was probably about 1,000 staff. With S&T back now—because S&T was over at MEST for a while—we're down to 450.

**Mr Bisson:** It was about half; that's what I remember. In your estimation, was that part of the problem, not having the staff necessary to oversee some of this stuff, your accounting problems etc? Did that have a cost? Was the lack of staff an issue, in your view, in the oversight of some of this stuff?

**Ms Frith:** I think, as Dr McTiernan said, certainly in retrospect the allocation of resources for administration needed to be enhanced. With that, the issues that were found in the audit probably wouldn't have happened. That's in retrospect, looking back. One of the issues is that the number of S&T programs grew so quickly. In 1995 we were down to a little over \$60 million and now we're up around \$200 million, so you can see the growth of the programs over that period of time.

**Dr McTiernan:** If I could pick up on that point, I think the real issue that underlines the Provincial Auditor's comments is that, in the balance between implementation and administrative focus, the balance of work with the staff complement went toward implementation issues. In retrospect, there should have been a tight focus on the administrative aspect.

**Mr Bisson:** I just make the point because I'm a firm believer that public service is not a bad thing. Public service is a good thing, and if we're going to do it, let's do it right. If it means that you need staff, get staff. I never agreed with the reduction in staff, but that was a decision by somebody else.

How much time do I have, Chair?

**The Chair:** You have four minutes left.

**Mr Bisson:** Keep your answers short, because I have three quick questions.

The challenge fund is one of the items raised by the auditor. According to ministry documents, the ministry did not issue a request for proposal on the administration contract for that. How did that happen, and how much was the contract? How much was the contract, first of all?

**Dr McTiernan:** Currently, the administrative contract with the research and development challenge fund in this fiscal year is \$1.35 million.

**Mr Bisson:** How in heck did you ever do that without an RFP?

**Dr McTiernan:** There was a decision made to pursue alternative service delivery. We outsourced.

**Mr Bisson:** I understand that. You outsourced. But how did you do that without an RFP?

**Dr McTiernan:** Through approval through the Management Board of Cabinet process.

**Mr Bisson:** Interesting. Isn't there a policy in place that you have to have an RFP on things over a certain amount?

**Dr McTiernan:** There is a mechanism for approving exceptions.

**Mr Bisson:** Did it strike you as odd that there was no RFP in a contract of over a million dollars?

**Mr Black:** It did go through Management Board. It was a decision that was taken.

**Mr Bisson:** I hear you. OK, moving on to the next question: There was no conflict of—I'll leave that one for next time.

We said that we found the marks on the ministry's summaries of the Premier's Research Excellence Awards competition did not agree with the reviewers' original score sheet. What happened there? Was that administrative or was that someone changing the outcome, or the final decision?

**Dr McTiernan:** At the risk of complicating a procedure, one of the challenges with that program—it's the Premier's Research Excellence Awards—is that you have an array of nominations that go from Shakespearean literature quite—

**Mr Bisson:** Literally.

**Dr McTiernan:** Literally. I was going to say that.

**Mr Bisson:** It's OK; we're all friends and countrymen here.

**Dr McTiernan:** And sometimes Romans—through to engineering research, through to biological research. The way in which the nominations were assessed was that the board members, in pairs, got a sheaf of nominations and they went through their own ranking. Then they got together collectively as a board to compare rankings and compare notes across very different applications. In the first couple of review processes I can expect that people's sense of weighting, people's sense of evaluation changed as the discussion on the merits of the different initiatives came forward.

**Mr Bisson:** Does that happen often?

**Dr McTiernan:** We had a discussion last night with the program officer responsible for this and he was quite firm in the fact that the administrative procedures, based on the experience of the board, are a lot tighter now.

**Mr Bisson:** Could it be that certain members of the board wanted a certain outcome and that's why the marks changed?

**Dr McTiernan:** It's impossible to say, but I expect not. I expect this was done very much in the context of an academic peer review process. The informal as well as the formal rules in that process are quite rigorous, as you know.

**The Chair:** Thank you, Mr Bisson.

**Mr Bisson:** You're quite welcome, Mr Chair.

**Mrs Liz Sandals (Guelph-Wellington):** I must pre-ambulate this by saying I'm also quite supportive of the intent of this and of the whole idea of research and partnerships hopefully leading to commercialization and

innovation in our economy. But it struck me as I read through all of this that the Ontario Innovation Trust seems to be structured quite differently from the other programs that have been set up to administer various funds. I wonder if you can comment, first of all, on why the whole model of a trust fund was chosen, as opposed to the more direct administration that one sees in some of the other boards and some of the other grant programs. Why this unusual trust format?

**Dr McTiernan:** I expect the decision at the time was influenced very much by the recent establishment of the Canada Foundation for Innovation, which is a federal funding trust established under legislation. One of the primary intents of the Ontario Innovation Trust—not the sole, but one of the primary intents—is to match funding available through the Canada Foundation for Innovation and essentially to lever federal funding into Ontario. It is noticeable that the general operating framework of the two bodies—one federal, one provincial—is quite similar.

**Mrs Sandals:** if this was something that did have some justifiable reasons, why would there not have been any submission to cabinet? Why would there not have been any business plan? Why would those sorts of normal procedures not have been followed out in establishing the trust? What I'm hearing you say is that there are some legitimate reasons that you might want to go that route. Why was it not followed through, then, with submissions to cabinet and business plans and the normal sorts of things we would see? We are talking about \$1 billion here.

**Mr Black:** If I might; this actually gets back to what Mr Bisson was asking earlier. It would be speculation on our part because we weren't there, but I think it's safe to say that the government wanted to move fairly quickly to take advantage of the newly announced CFI program at the federal level. A decision was taken that the best structure was one that was similar to the federal program, which was at arm's length, completely separate from the other programs and quite different from some of the other programs that had been run in the ministry and, frankly, run at the federal level. It would be speculation on our part and I wouldn't want to go into how that decision was made, only to say a decision was taken at that time that it would be set up that way.

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**Mrs Sandals:** Given that you've obviously been in various other ministries, would there be any other instance where you were involved in a program, where you were going to fund somebody to the tune of \$1 billion and there was no submission to cabinet?

**Mr Black:** In my experience, I can say that I haven't seen that. That's not to say it hasn't happened.

**Mrs Sandals:** Could we talk a bit about the structure of the trust and what the relationship is between the trust and the government? I guess I'm still trying to wrap my head around this \$1 billion that is sort of sitting out there. Is this a time-limited arrangement or does this thing go on somewhere out there forever? How is this structured?

**Dr McTiernan:** The \$750 million that is currently being transferred to the trust will be spent over the 10-year time frame of the trust. Over \$700 million of that \$750 million has already been committed. The trust has also earned some interest, which is available for funding.

With the total funding committed in the trust, at whatever point, the commitments equal the total amount of money available in the trust. The trust will manage projects through to completion and wind down once all of the funded projects have been completed and accounted for. Most of the projects are capital projects or longer-term projects, so the expenditures on a project-by-project basis will be over several years.

**Mrs Sandals:** So potentially it could go on longer than 10 years.

**Dr McTiernan:** I would expect, assuming a fixed amount in the fund, the funding commitments will be made well within the 10 years, and then the projects managed through the 10-year cycle.

**Mrs Sandals:** What happens if there's any money left in the fund when the projects come to fruition or in the case we've talked about that in fact some of the projects just go off the rails and are never fully funded?

**Dr McTiernan:** For projects that go off the rails during the lifespan of the trust, the money would remain with or return to the trust. Should the trust have any residual funds at the end of the trust period, I believe legally the proceeds are distributed among the beneficiaries. If I could just refer to a document with respect to the distribution on termination, "If this agreement terminates on the 10th anniversary of its execution by the sponsor, the trust fund shall be distributed by the trustee, as directed by the board, among such eligible recipients in such amounts or proportions for greater certainty that the complete exclusion of any eligible recipients, as the board in its unfettered discretion shall determine, provided that such eligible recipients to whom such amounts are distributed shall be registered charities under the Income Tax Act of Canada."

**Mrs Sandals:** So in fact, if there's money left over at the end, the money doesn't come back to the government as funder; it goes to wherever the board decides to send it.

**Dr McTiernan:** That is correct.

**Mrs Sandals:** That is very strange.

Let's talk, then, about the trustee and the board, and the relationship between the trustee and the board. Who is the trustee? It just simply says here in the auditor's report that it's a private sector corporation.

**Mr Black:** If I might, I'll just introduce Neil McCallum, who is the legal director at our ministry.

**Mr Neil McCallum:** When the trust was established, it was established by agreement with a financial institution. The trust company at the time, if I recall, was the Royal Trust Corp of Canada. The trustee: There is provision in the agreement for that to change. In all candour, I'm not able to tell you just at the moment which financial institution is acting as trustee. But the structure of the trust operates such that the trustee is the caretaker

of the corpus of the trust monies and is charged with the requirement of distributing that money on the direction of the board, as set out in the trust indenture.

**Mrs Sandals:** So the government would then presumably have virtually no relationship with the trustee but it has a relationship with the board. Is that correct?

**Mr McCallum:** Yes. That's absolutely correct.

**Mrs Sandals:** Let's talk about the board, then. What sort of relationship, if any, does the ministry have with the board?

**Mr McCallum:** The government of Ontario has the capacity under the trust document to appoint three members to the board. I believe the total complement is seven, and there are three government representatives appointed by order in council.

**Mrs Sandals:** Which I take it from the auditor's report in fact hadn't happened recently, that those positions were vacant and it is now in the process of getting those filled. How long had those positions been vacant?

**Mr McCallum:** I think, with respect to any one of the individuals, the period of time might have been as long as two or three years. However, I want to be sure the committee understands that the fact that the board appointees' terms were not extended or that the persons were not replaced resulted in any failure in the operation of the board of the trust. The trust deed itself provides that on any termination of the term of a board member, the board member shall continue as a member of the board with the duties and obligations of a board member until a successor is appointed.

**Mrs Sandals:** So these people had been previously appointed and then, rather than taking them back through the normal order-in-council process, the government of the day had just left them sitting there, rather than going through the order-in-council process again?

**Mr McCallum:** I think that's a fair result. I'm not sure to what extent the people would have turned their minds specifically to it, but certainly the result is that although the order-in-council term may have expired, the people who were appointed to the board continued to serve.

**Mrs Sandals:** Just one quick question, because we're just about to get some lunch: If I'm understanding you correctly, on paper at least the only legal connection between the ministry or the government of Ontario and this trust is the ability to appoint three board members. Otherwise it's totally at arm's length?

**Mr McCallum:** Yes. I think that's a fair statement from a reading of the trust document. The government of Ontario is styled in the trust document as the sponsor of the trust, and the sponsor is excluded except to the extent that the sponsor has the capacity to appoint the three members to the board of the trust. That having been said, however, the trustees have the normal fiduciary obligation of any trustee to deal with the obligations set out in the trust document to handle the distribution of the corpus of the trust to the beneficiaries in accordance with the trust document, and in doing that they are not precluded, for example, from entering into arrangements

with the government of Ontario. I think, as Dr McTiernan and Deputy Black have indicated earlier, the members of the board of the trust have engaged with the ministry in determining what would be better arrangements than those that would appear strictly on the face of the trust document.

**Mrs Sandals:** But if you go back to what the legal role of the government of Ontario is strictly on paper, in fact this has been set up at sufficient arm's length that we're dependent on the goodwill of the board in order to exercise some tighter control over this \$1 billion.

**Mr McCallum:** I would say that's correct. The sponsor's participation in the trust on the board is confined to the appointment of those three members.

**Mrs Sandals:** Thank you very much for the information.

**The Chair:** On a clarifying point, perhaps you could provide us with the provisions as to how the other four are appointed to the trust.

**Mr McCallum:** Yes, certainly. The appointments to the board are made under article VIII of the trust deed. The composition of the board is three individuals appointed by the Lieutenant Governor in Council—those are Ontario's representatives, obviously; two individuals who are appointed by the Council of Ontario Universities; one member appointed by the Ontario Hospital Association; and one member appointed by the Association of Colleges of Applied Arts and Technology of Ontario.

**The Chair:** Thank you very much. We're going to reconvene at 1 o'clock.

*The committee recessed from 1202 to 1305.*

**The Chair:** Mr Fonseca, do you have some questions?

**Mr Peter Fonseca (Mississauga East):** Mr Deputy, I have to say, as the group has brought up, innovation and creativity, especially from our government's end—we believe in a knowledge-based economy, and this program would be something that would be very dear to us, and that's why we want to make sure that it has sustainability and longevity and is governed in an appropriate manner. It is going to be getting fixed, but when you look at when the program started, in 1998—and I understand you had to jump on opportunity from the feds, as you brought up, what was presented to you, but that was 1998. That was five years ago. The previous government brought up many a time how they were business people, great managers, and what we see here is a lot of mismanagement—business mismanagement is what I'm saying, because over a five-year period not to have a business plan, a strategic plan looking for certain outcomes and having those outcomes in place, just doesn't make sense to me.

I tried to think of this in a corporate model, and I'm not sure if it would apply. I thought of a company like 3M, where they're all about innovation and they have within their corporate structure a number of entrepreneurial units. I guess this would be working in a similar type of system. Now, they have outcomes in terms of, hey, they've got to make a profit with some of these innovative products and services that come out of

that corporation. I think the same thing relates back here, because we're talking about generating funds and revenue for the people of Ontario.

Deputy, I know you brought up that good jobs and above-average wages and new creative jobs have come from this program. What I want to know is if you can give me a shining star that has come from this program in terms of jobs created that have had offshoots and the type of revenues that have come from one of those shining stars over the five years.

**Mr Black:** Thanks for the question, Mr Fonseca. I'll let my colleagues actually go to find that shining star for you, but let me take on a couple of the points you made. It's not as if the ministry or the government of the day did not have a strategic plan around science and technology. There was a fairly well-articulated plan that essentially went through that chain from research to commercialization.

I think it's fair to say that the new government has stressed quite clearly that it wants to improve the results of the kinds of programs we find in the science and tech area, and that's exactly what we're embarking upon now as we get ready for the next budget and beyond. So I think it would be a mistake to think that there wasn't some kind of strategy; there was. I think we need to heighten the focus on results, commercialization, that far end of the spectrum.

I should also make it pretty clear that as poorly as some of the areas seem to have been followed in terms of the paper management between the ministry and some of the programs, I think it's pretty safe to say that within the programs themselves, within that scientist performance side of things—and this was what Mr Zimmer was getting at, that the science sort of held lord over the administration. I think that's a fair characterization; maybe the balance I would have put a little bit more even than maybe his comments suggested. It's fair to say that the Provincial Auditor has essentially said we need to do more on the administrative side. But there's a lot of peer review that goes on within these programs, highly qualified, highly specialized scientists who look at this stuff to make sure that the proposals that are coming forward are the right kinds of things that actually do have some benefit. So I think that side of the equation should not be missed, that there is a lot of accountability within the programs themselves. It's just that I think we need to do a better job in our relationship between the ministry and some of the programs from our end of the world.

In terms of the—

**Mr Fonseca:** The accountability as a business is kind of where I was getting to.

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**Mr Black:** That's a fair comment. I agree we need to do a better job on that end, and I think from the comments you heard this morning, we're headed that way. The shining star?

**Dr McTiernan:** I'll give two examples, one of a large-scale project and one of a small-scale project. Both speak about potential rather than actuality. To pick up on

Deputy Black's point, the initial phase of the research initiatives was to focus on the quality of the research being funded and the scope and scale of the research being funded. The peer review process, often with international peers, spoke to the quality of the research. As Deputy Black said, it is now the time, in the context of our current economic priorities, to look at application, to look at commercialization and to look at ways in which the results of the research can be quickly brought to market where possible.

I'll give you a small-scale example that strikes us in the division as being good on a number of different fronts. A little more than a year ago, the Centre for Information Technology in Ontario, one of the centres of excellence, funded, for the first time, a call for proposals for applied research in the information communication technology area that was directed specifically at colleges, which are looking more and more at applied research as an area of activity and are beginning to develop expertise in that area. The call for proposals was, in science funding terms, a modest half-a-million-dollar call for proposals. There were 15 applications from colleges. Five colleges were successful in meeting the criteria of excellence and relevance. In an informal report back a couple of weeks ago, four out of those five projects look like they're in the pre-commercial phase with commercial application. It's a good-news story. That's a huge success rate, if they're successful in all of those stories. Colleges are involved as well as universities, and it's on information and communication technologies, which is one of the areas that government continues to be interested in for high-value jobs. That's an example of a new approach to involve a broader array of researchers that may have some immediate potential.

An example of a project in the health area that translates into jobs immediately in terms of 60 researchers involved in an initiative in Toronto, coupled with an equivalent number of researchers at the University of Oxford—something that may have a hugely greater potential for medical discoveries and medical applications as the project goes ahead—is a proteomics initiative by Dr Aled Edwards at the University of Toronto. My understanding of genetics research is quite limited, but proteins are attached to DNA molecules and they affect the way in which they operate. They're a potential key for new medicines. Dr Edwards has a \$90-million, multi-year research project bridging a research community here and a research community in the United Kingdom to essentially do for proteins what has been done for the DNA molecule in analyzing the structure, information and components of the DNA molecule, which may have direct effects on the type of medicines produced and their applications.

I give you those as ranges of the types of research that's funded.

**Mr Fonseca:** That \$60 million came from where?

**Dr McTiernan:** It was \$90 million. There was money from the federal government, there was money from the Innovation Trust, the Research and Development Chal-

ledge Fund and GlaxoSmithKline through the Wellcome Trust, and the Wellcome Trust have funded a large share of the research as private sector partners.

**Mr Fonseca:** Who owns the IP for all of that stuff?

**Dr McTiernan:** I don't know the specifics in this particular case, but IP ownership for initiatives funded through Ontario government programs tends to be determined by the recipient institution for the grant. There is a range of IP policies and procedures across Ontario's universities and research community running from the traditional approach, where institutions have owned the intellectual property, to approaches where some of the international trends are being mirrored by Ontario institutions. That is where a lot more of the IP is owned by the principal investigator.

There is a trend in the United States on intellectual property that is being picked up by other countries involved in the research enterprise. A couple of dozen years ago the United States essentially had a government-owned IP approach which has migrated to institutions-owned IP, to a series of arrangements now across a great many research-intensive institutions in the United States, where the principal investigator owns the IP and works with the institution on protecting the academic pathway of conference papers and stuff like that, while developing and applying IP with business assistance from business development arms of the institution in question. A lot of our institutions are moving in the same direction.

**Mr Fonseca:** Can I just ask, where is this organization housed? Is it housed somewhere?

**Dr McTiernan:** The one that I just spoke about?

**Mr Fonseca:** No, the OIT, the Innovation Institute of Ontario. Where is the bricks and mortar? Is there bricks and mortar?

**Dr McTiernan:** Yes, on College Street, just west of University.

**Mr Fonseca:** So right down here?

**Dr McTiernan:** Yes.

**Mr Fonseca:** OK, and who owns the bricks and mortar?

**Dr McTiernan:** It's leased space. The question of who owns the building—I'm not quite sure.

**Mr Fonseca:** Aren't we building it right now? Isn't the construction going on down there?

**Dr McTiernan:** The construction that's going on on the southeast corner is the MARS facility, the medical and related sciences facility. That will ultimately house wet lab space, incubator space, office space for a variety of business initiatives and research space for researchers.

**Mr Fonseca:** Thank you.

**Mr Bisson:** Welcome back. Did you manage to find somebody who was working there at the time that this program was created?

**Mr Black:** Let me answer that question in a different way. I'll probably frustrate you with my answer a little bit, but let me try it and you can come back at me.

**Mr Bisson:** I'm sure you will.

**Mr Black:** Mr Bisson, you had asked this morning about the structure of the OIT, how it was set up. It's a

little bit different from other programs you might have heard of.

**Mr Bisson:** That wasn't my question. My question was, had you raised the alarm bell?

**Mr Black:** That was my second point: Did anybody give the minister or the government any advice as to whether or not this was a good idea or appropriate or something like that? Let me take this on and I'll give you four or five responses. You'll probably want a supplementary.

**Mr Bisson:** I'm sure I will.

**Mr Black:** The committee will know that when civil servants give advice either to a minister or the government, that advice is confidential and stays between the civil service and the government. So even if I knew what the answer to your question was, I couldn't tell you.

To get more specific with the OIT and how that was structured, it was set up quickly, as we mentioned earlier, to respond to an opportunity for matching funds at the federal level through the Canada Foundation for Innovation, which too was an arm's-length trust. So the structure of the OIT in many ways mirrors what the federal government was doing, and that was one of the reasons it looks like it does.

The government also wanted some flexibility, I believe, to be able to take advantage of some of the longer-term partnerships that might be available through such a structure. So it's money that was flowed out over a stretch of time, as opposed to a one-year kind of program or a single-year funding for a program.

I think it's fair to say that it's a well accepted and appropriate approach to fund R&D infrastructure. There's not much sense in giving money to researchers to have them not have equipment, not have a place to do that kind of research.

**Mr Bisson:** What was the last point? I didn't quite catch your last point.

**Mr Black:** On the flexibility for multi-year?

**Mr Bisson:** No. It was set up as an R&D structure. I didn't quite follow.

1320

**Mr Black:** I'm sorry. The last two points I'll make relate to the accountability within the framework of the OIT and how it works within the government relationship. I was trying to make the point that it's important to fund the infrastructure, not just the salaries or the overhead. The OIT does that.

Within that kind of accountability framework for that R&D expenditure, there is the Canada Foundation for Innovation peer review, which is quite stringent, quite scientific in its approach. The result is that deserving, qualified top scientists are actually getting the support they need to do that research. So it's not as if there isn't some kind of accountability within how that money is expended.

The last point I'd make is, yes, maybe there were some—the question has come, how come it took five years to get to the point where we have a different kind of relationship with the OIT? We take the point, and we

take it seriously, and that's exactly what the auditor was saying. The OIT has offered, and we've accepted, to essentially treat them as, and they're going to act as if they were, a transfer partner, where they will table reports in the Legislature, they will come and appear at committee and they will open up their books to the Provincial Auditor.

I think it's safe to say that it's a relationship that is changing I think for the better, according to what the Provincial Auditor has suggested would make sense in terms of value for money and accountability.

**Mr Bisson:** Do you find that somewhat scary? Only after the auditor finds that there is a problem, all of a sudden the ministry is embracing better accounting methods of monies that are flowed to these various organizations. Does that concern you? It would seem to me that within the ministry there would be a process or a structure or a mechanism so these things could have popped up a heck of a lot before the auditor showed up.

**Mr Black:** That's a fair comment. I'd be more afraid of the fact that we weren't responding in a way that makes sense. But having said that, I think it's fair to say that the ministry has been working on something for some time. It's now coming through, but I take your point.

**Mr Bisson:** I don't want to talk about where you're going; I want to talk about where you've come from. So before you use my time for those kinds of answers, don't.

**The Chair:** Come on, Mr Bisson.

**Mr Bisson:** Chair, it's my time.

**The Chair:** Mr Bisson, we also have to treat our witnesses with respect.

**Mr Bisson:** I am. But the way you're running this is that the opposition gets a very finite time to ask questions, and I have to change how I do my questions, given the way you're chairing this committee. Normally there are 20 minutes per caucus and you're able to work this out.

**The Chair:** Mr Bisson, you've only been here for a couple of days, and the committee has worked fine.

**Mr Bisson:** I was been on this committee a long time before most people have been around here, so don't start.

**The Chair:** Well, I've been here a lot longer than you too, Mr Bisson. Treat our witnesses with respect or I'll call you to order.

**Mr Bisson:** Very good, Chair. I hope you're having a good day.

My question to you, going back to the beginning, is that on the issue—I understand what you're saying in the first part of your answer, that the advice you give to government is confidential and is the relationship that a government has with its bureaucracy. I understand that; there's a professionalism to that. I hear what you're telling me.

But I can't believe for a second that the ministry would have put itself in a position of transferring \$750 million in this particular case to an agency, that it didn't have oversight. Do you find that contrary to normal procedures you would find within the ministry?

**Mr Black:** I think it's safe to say that, as we said this morning, it's a different kind of structure than you would find in most cases, but it's a structure that the government chose to use to move quickly to take advantage of some of those opportunities. There was a decision that was taken to look that way.

**Mr Bisson:** I understand. But my question is, is that out of the ordinary? Was the process that was followed here out of the ordinary? If government today, or government 10 years ago, would have come to your ministry and said, "We want you to establish such a trust," do you think the way this was carried out was a bit out of step with what normally would have happened?

**Mr Black:** As I said, it's a different kind of structure, but it's one that has worked at the federal level. It's one that the government decided it wanted to do.

**Mr Bisson:** I have no argument with the structure. My argument is not that. I think there's some validity to having an outside group do this kind of work. That's not my argument. I just have a very hard time accepting that we would set up a pot of money of \$750 million, give it to a trust and not have, as government, a way of ensuring that those dollars are properly accounted. I have no doubt they did what they were supposed to do. I have no reason to believe they did anything wrong. What I have a hard time understanding is that the ministry would not have tried to put in place those mechanisms to have the assuredness that we need. My question is, the very fact that there were not checks and balances put in place as far as accountability, was that, would you say, out of step with what normally happens when a ministry sets up such programs?

**Dr McTiernan:** I think I could answer that in two ways—perhaps not to your satisfaction—but I'll take two stabs at it. One is that as the trust was established and operated, the ministry did confirm that the trust was doing two things, that it was adhering to rigorous peer review processes in the evaluation of applications. In fact, there was a double, if you like, oversight measure in that regard, because many of the projects—not all—were already approved under the Canada Foundation for Innovation. The second part of the first part of my answer is that the trust was publishing regular reports on its Web site and accounting for its activities in a public manner, and that was material we were able to access.

The second part of my answer deals with the development over time of an informal working relationship, given that we didn't have any formal ability to oversee the operations of the trust that kept us informed and aware of the activities of the trust, particularly those activities as they related to the management of the other related and complementary science and technology programs that we managed.

**Mr Bisson:** I understand what you're telling me, and I go back to your original answer, which was that advice is confidential between the government and the ministry. I accept that at face value. Just for the record, I want to say again that I really find it odd that the ministry would not have given advice to the minister—or whomever—that

there needed to be better accountability. I just really have a hard time believing the ministry wouldn't have done that. I understand that you can't answer that, or you won't answer it. That's fine. We'll move on from there.

Some of the other stuff that I worry about is that, if this government, or a future government, was to go to you as the deputy minister today and say, "Here's a pot of \$500 million and we want you to set up a trust," would you do it differently? Would you advise the government differently?

**Mr Black:** I think it's fair to say that we would put an array of options together that essentially would go from A to Z. One of those options would be the trust. There might be some different ways that we would suggest—

**Mr Bisson:** But I'm saying, if we were to go to a trust again—and my argument is not with the trust, it's on the accountability—knowing the experience you've gone through now, can I be assured, as a legislator and a taxpayer, that the ministry has learned something through this exercise that the auditor has brought them through? Would you advise the minister that we need to have better accountability if you had to do it again?

**Mr Black:** Actually, the answer to that question is fairly easy. I'd only have to look at the Provincial Auditor's report to say that obviously what we had in place was not working. The Provincial Auditor essentially picked apart some of the pieces that needed to be fixed. That would be my advice to the minister, that we would essentially follow those kinds of recommendations.

**Mr Bisson:** Here's the difficulty we have as legislators—because you're right. I thought you were going to answer that this morning when I asked you the question, which is, it's confidential information between the minister and the ministry and you're not in a position to tell me what those discussions were about. But the difficulty we have is that because of that very rule, we need to have some sort of a mechanism to make sure that the spending of dollars by government through a ministry or an agency or a trust of that ministry is done in an accountable way. I'm wondering if you have any suggestions about how the public could be more assured by way of some mechanism that there is a proper accounting of that money should we ever be in that position again. Do you have a recommendation to us that the ministry should undertake something, or should we extend the rules of the auditor to include monies that go into these types of agencies as something that he is able to do by way of his office and properly account for?

**Mr Black:** I think what the auditor has told us—and maybe the way to look at this—is it's a template kind of a look that we can apply to any future program that might look like this or is somewhat different. He's clearly pointed out that there are some deficiencies in what it is we've been doing, and that's what we are addressing.

On the other side of this, the trust has come forward and said, "We're going to act as if we're a transfer partner and essentially table reports, come to committee and have the Provincial Auditor be available to look at the books."

We're getting to where I think your question is going. I'm not so sure that our answer is satisfactory, but the answer I would give you is that I think we've got a template we would use to apply to any kind of programming in the future, yes.

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**Mr Bisson:** My direct question is, would you favour the powers of the auditor to be extended to be able to audit organizations such as the Ontario Innovation Trust?

**Mr Black:** Probably from a personal and professional opinion, I would say yes.

**Mr Bisson:** The answer was yes, for the record.

On this particular issue, with regard to people on advisory boards who apparently may have been in conflict and didn't declare a conflict when they got into whatever conversation or decision that was made, do you have any sense of how often that happened?

**Dr McTiernan:** I can speak to that from the two years' experience I've had now around the operation of some of the boards. It was, in my judgment, very seldom that those incidents happened. The pattern of behaviour at the boards is quite meticulous about the declaration of conflict, and there is generally a formal record of that. Our assessment from a divisional point of view of the observations of the Provincial Auditor is that there may have been instances that weren't minuted that ought to have been minuted, but the Ontario research and development challenge fund board, which I'm using as an example, essentially has adopted the conflict of interest principles that a corporation would have in place. There is a parade in and out of the room on a regular basis by people who for one reason or another have—

**Mr Bisson:** Has there been a change in the way the boards operate when it comes to the issue of declaring conflict?

**Dr McTiernan:** The observations of the Provincial Auditor have resulted in the introduction of much more rigour. There have been suggestions around conflict of interest that the Provincial Auditor has made that will be reflected in new guidelines that we're actively developing right now. It will involve not just behaviour at and during meetings but also a periodic declaration of interests so that there are sort of benchmarks throughout the person's tenure on a board against which conflict can be generally judged and assessed.

**Mr Bisson:** My overall observation of this whole thing is that here we were—probably with good intent, the government decided to create things like the Ontario Innovation Trust, which in the long run is probably not a bad thing, but we were in an odd position where the auditor didn't have the powers, and still doesn't have the powers, to audit the trusts themselves; the ministry didn't have the safeguards in place to assure itself that the monies being expended by the trusts and how they were being allocated was done in a way that invoked a lot of confidence; and we had a situation where people on the board were acting in situations where they were potentially in conflict. So you can understand why the auditor

and others are somewhat critical of the ministry for this situation we find ourselves in.

I just have to say, it's not your doing, and I don't blame the bureaucracy for this. Please understand me, my attack isn't on you. What I'm trying to surface is how a government ever allowed that to happen in the first place. I don't understand, in all conscience, how you can set something up like that and not require and demand the protection of the taxpayers' money in a way that we can be really clear that there is no conflict, that it is clean, that there is no danger.

At the end of the day, I have to believe that the work they did was all good, but how is the public ever to have confidence in government and in the political institutions we have if we don't have good accountability? That's my point around this whole thing. I've got to say, I give the government of the day failing grades on that.

The last question—because I take it I'm running to the end of my time, Chair, or your patience. Which one first?

**The Chair:** My patience first, but your time is second, so you have two more minutes.

**Mr Bisson:** I go back to the issue of the RFP. We just got into that at the end of this morning. What is the current policy? I don't remember what it was, but there is a dollar amount. If a contract is being let out for more than a certain amount of dollars, you need some sort of an RFP.

**Mr Black:** It's \$25,000.

**Mr Bisson:** So in this case we allowed the management of these services to be contracted out at over \$1 million without an RFP. How did that ever happen? What's the explanation?

**Mr Black:** Again, probably an unsatisfactory answer, the government decided that it was going to do it this way. It went through the Management Board process to ensure that there was some rigour around how the money was going to be spent. It was different than some of the rules, but there are exceptions to those rules, as you will maybe remember yourself.

**Mr Bisson:** If I was your minister and I was to do that, would you advise me to do an RFP; if I was your minister and we were having a private conversation?

**Mr Black:** I don't think I can answer that question, actually.

**Mr Bisson:** You're good. Is this contract still being managed by the same people?

**Dr McTiernan:** Yes.

**Mr Bisson:** To the auditor, have we audited that, the work that they do? I don't know the answer.

**The Chair:** Which contract?

**Mr Bisson:** With regard to the challenge fund.

**Mr Gerard Fitzmaurice:** We looked at the challenge fund.

**Mr Bisson:** And?

**Mr Fitzmaurice:** It's throughout the report—

**Mr Bisson:** Again, I say it's pretty darn odd that a contract of over \$1 million is let out for the management of something like that. I have to believe in my own mind that the ministry must have given some advice and at the

end of the day government decided to do otherwise, and I just say it's a failing grade again on the part of the government to have done so. I'll tell you, if people don't have confidence in government, this is one of the reasons.

**The Chair:** Mr Dunlop is next, but could I just ask you a question? In terms of these boards and the peer review teams and the committees and whatever, my understanding, and you can correct me on this, is that it would be very natural that there would be conflicts occurring all of the time because of the expertise needed to review the applications and allocate the money and in many cases there is not a huge number of experts in certain areas. Would that be a correct characterization of why conflicts would be common in this kind of an endeavour?

**Dr McTiernan:** That is the case, Mr Chair. There are conflicts, and conflict is defined in terms that relate to institutional interests and research project interests and on the part of some board members in terms of personal investments or personal interests they may have in industrial partners. So there are a range of conflicts across the academic research domain and across the industry partnership domain that do crop up quite frequently. Once it's clear that a research proposal under review is one about which a board member or a panel member may have an interest, either academically or economically, the conflict is declared and the person leaves the room until the decision is made.

**The Chair:** Many of the people who sit on these committees, if they are paid at all, they're not paid very much, many of them. Would a preponderance or a great number of them come from universities that would be applying for grants?

**Dr McTiernan:** On the review panels it's a mix, but yes, there is a large proportion of people from universities that are research intensive. There's a bit of a funnel effect. We have close to four dozen research institutions that one way or another have benefited from some of these programs. But by far, the greatest number of projects rests with half a dozen of those institutions, and they tend to be the institutions from which one selects panel reviewers and often board members.

**The Chair:** OK. Mr Dunlop.

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**Mr Garfield Dunlop (Simcoe North):** Are you prepared to answer questions on Ontario exports?

**The Chair:** That wasn't really part of the auditor's report, Mr Dunlop, so we'd prefer to keep it focused on—

**Mr Dunlop:** I'm sorry. Then I don't have any questions. But I did want to get around to that at some point.

**Ms Laurel C. Broten (Etobicoke-Lakeshore):** You've said a couple of times today that we moved quickly on the establishment of the trust because of the fact that the CFI had been established and that we mirrored in some ways the establishment of the CFI. I just wanted to clarify that the CFI was established

through legislation. The OIT was not established through legislation, right?

**Dr McTiernan:** That's absolutely correct, yes.

**Ms Broten:** The CFI funds: Was there some risk that we needed to move at lightning speed or we were going to miss an opportunity?

**Dr McTiernan:** The CFI funding is generally distributed across the country. They have calls for proposals in a variety of their programs periodically, like our programs do. If a jurisdiction or institutions in a jurisdiction can't attract matching funding from their own jurisdiction, they're at risk of not receiving CFI funding.

**Ms Broten:** Right, but we could have taken a little bit more time. We weren't at the expiration date of the CFI matching availability.

**Dr McTiernan:** I can't answer the specifics of that question in terms of the round that might have been at play at that time, but I can check and get back to you.

**Ms Broten:** OK. You'll let us know.

The trust agreement is dated March 31, 1999. I guess one of my questions is, is that a real date or not? Having drafted many documents—sometimes the date on the document isn't the real date. This was announced in a May budget. What is the timing as to when it was really entered into? When was the trust settled? When did the money flow?

**Dr McTiernan:** Excuse me for a minute, please. We have no reason to believe that March 31 wasn't the date.

**Ms Broten:** When did the money flow? When did the first money flow into this trust, to essentially settle the trust because the funds came in?

**Dr McTiernan:** I was going to make an assumption, and it's probably not a good thing to make an assumption. Let me check and see if I have that. We can't answer with 100% certainty at the moment.

**Ms Broten:** Perhaps you can let us know when the money flowed into the trust.

**Dr McTiernan:** Yes. I'd be happy to do that.

**Ms Broten:** Thanks.

So we're at March 31, 1999, the day the agreement is signed. We've got a couple of directives: the accountability directive, September 30, 1997, and the transfer payment accountability directive, September 29, 1998. So those are in place. What I'm trying to determine is, was a conscientious decision made that these were not applicable, or did no one turn their mind to the applicability of these documents which govern government accountability?

**Mr Black:** Can we get back to you on that one as well?

**Ms Broten:** Sure.

I want to ask about our government appointees on the board. We have three appointees on the board, right?

**Dr McTiernan:** Yes.

**Ms Broten:** I don't need names, but who are these individuals?

**Mr Black:** I think it would be deputy minister status.

**Ms Broten:** Deputy minister status. OK. Because it's not unusual in a corporate structure to have appointees on

someone else's board. They have obligations back to the organization that appointed them, to report back and to look after the interests of the organization that put them there in the first place. Through all of this, it's not clear to me that there were any obligations for those three individuals to report back and make sure that we as their appointees—who knew what was going on over there in terms of a report-back obligation. Was there one?

**Dr McTiernan:** I would have assumed, in terms of their role as deputies, that would have been a corporate responsibility to government. I think the interesting challenge for deputies is balancing their fiduciary responsibility as trust board members with their responsibility as deputies in that regard.

**Ms Broten:** But certainly, then, from your assumption, information was flowing, but that requirement is not documented anywhere. It's not documented in the trust agreement, for example. I haven't seen the trust agreement, so I don't know what is in it, but there's no formalized documentation of a reporting obligation back.

**Dr McTiernan:** No.

**Ms Broten:** There are some obligations set out in the trust agreement that appear—it sort of indicates that to us when we look at the auditor's report, obligations as to providing quarterly updates and other types of account-back obligations. I was wondering if you could just go through what the obligations were. It seems to me that the very few obligations and accountability mechanisms that were in place weren't even followed. So we're talking today about what more should have been there. The auditor indicates, I think, that we didn't receive even what we could have received.

**Dr McTiernan:** If we could take a moment just to review our table of contents here.

**Ms Broten:** Sure.

**Mr Black:** Would the committee be fine if our legal director, Neil McCallum, sat down?

**The Chair:** Sure.

**Mr McCallum:** I wonder if perhaps you could clarify what part of the auditor's report you're looking at. The trust deed I don't believe has any formal reporting mechanisms back to the government. I just want to be absolutely sure I'm clear on the question.

**Ms Broten:** Sure. I'm reading the paragraph on page 169 of the auditor's report, section 3.07, which says, "In order to try and ensure that the trust is in compliance with the accountability framework established in the March 31, 1999 trust agreement, the ministry will:" and it lists out a number of things that they're going to do. So that leads me to believe that there is some kind of accountability framework in the document, which I haven't seen.

**Mr McCallum:** The mechanism that's being referred to I believe would be the objects of the trust, the eligible costs that are capable of being funded, eligible recipients and so on, and the responsibility of the trustee to disburse on the recommendation of the board, which has the fiduciary responsibility to do the analysis and choose the projects.

**Ms Broten:** OK. That being said, I guess my question is still the same question. Clearly we're all in agreement that we have a trust agreement that is extremely lacking in accountability mechanisms.

**Mr McCallum:** The accountability to the sponsor in my view is not there. That is, the trust, the trustee and the board of the trust do not have an obligation to report to the sponsor of the trust. That's my reading of the trust document. I think that's yours as well.

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**Ms Broten:** OK. The process for all of us is a little bit frustrating because it is not news to anybody that there are problems with the structure that was initially chosen in terms of accountability mechanism. There was a committee of our colleagues that would have sat around asking many of these same questions in 2001. It's been repeatedly examined by the auditor, and here we are in 2004 asking the very same questions about the settlement of this trust in 1999. I appreciated your comments that you're going to move forward and put in many of these mechanisms. My questions are, when did this start in terms of putting in the mechanisms, because even the most recent auditor's report says, "The ministry will," and it was in the future—clearly, it had not started yet at that time—and how are we going to ensure that we're not all going to be sitting around here again in three or four years from now, talking about these same concerns? Is this a salvageable structure? Can we put sufficient mechanisms in place under the structure that's been established?

**Mr Black:** I'll try to answer those questions. I think the ministry was working on some of the accountability mechanisms back in the fall. So within the last two or three months we started to essentially put in place a process that starts to get at a bit of what you're talking about.

It's also clear that the trust has agreed to act in a different way, delivering much more transparent and accountable kind of information, throwing itself open to discussions at committee, tabling reports in the House and the like. So I think it's a good start.

To answer your question as to three or four years from now, I would hope that with the kind of relationship we're building with the trust, we wouldn't have to talk about this in three or four years. I can't guarantee that, but part of my job is to make sure that we don't have to come back here and answer that same question.

**Ms Broten:** OK.

**Mr Bill Mauro (Thunder Bay-Atikokan):** On the bottom of page 185 there's a comment under "ministry response" that says, "The ministry agrees that there should be openness, fairness, and transparency in the conduct of the science and technology programs." It says that "there should be." So can I assume from that comment from the ministry that in the past there has not been openness, fairness and transparency in the conduct of these programs?

**Dr McTiernan:** Speaking from the divisional perspective, as we were drafting that, the better grammar

might have been "there will be," speaking to a general intent on behalf of the ministry staff to work toward—

**Mr Mauro:** "There will be" because there hasn't been?

**Dr McTiernan:** No, I think that's a broader interpretation than we might have put on it. We were responding to the recommendation. We certainly understand the need to improve administrative procedures around transparency and accountability.

**Mr Mauro:** I think the question was asked earlier, to put a bit of a finer point on it, if you were to re-establish the program today, you would do some things differently around accountability, performance measurement, reporting procedures, that all of those things would be changed or addressed?

**Mr Black:** Yes.

**Mr Mauro:** There seems to have been during the course of the day a consistent justification for the set-up of the program and the manner in which it was, which we all seemed to agree had lots of flaws in it from a business management perspective, that it was necessary to do it that way because of the CFI funding that was coming federally and that we were in this rush. But clearly we would have been able, I would assume—and I'm asking you—to tap into that federal funding through some other mechanism, that we didn't need to rush this trust agreement into place to make sure we were able to tap into those funds? Was there another way we could have done it until we had this right and proper? I just have a bit of a problem with this consistent justification of the flaws in the fund, that we had to do it this way so that we could tap into this federal funding.

**Dr McTiernan:** There would have been, I assume, a number of options, as we have in the establishment of any program, to start up a new initiative and to manage it in a variety of different ways.

**Mr Mauro:** Was your program oversubscribed? I mean, if you had \$750 million allotted, did you receive program submissions for more than that dollar value?

**Dr McTiernan:** Excuse me. I'll need to check on that one.

**Mr Mauro:** It's not important. If you don't have it, it's not important.

**Dr McTiernan:** There is a possibility that the Innovation Trust could be oversubscribed by next April, in terms of applications relative to cash available.

**Mr Mauro:** OK. When you receive the applications to the program, is there any allowance made for geographic distribution of the funds? Did the trust have a mandate to try and disperse the funds across the breadth of the province, or was there any consideration given to anything like that?

**Dr McTiernan:** The principle criterion for funding on a science basis is the excellence of the science. In practice, expertise in institutions across the province has been able to tap in based on the quality of the expertise. So northern universities, as an example, have been able to build on their reputations for forestry research and for mining and technology research to access the funds.

**Mr Mauro:** You know where I'm going with that a little bit. I understand your response, but at the same time—and I'm sure Mr Bisson probably might share my concern on this—I do have a concern with a pot of money this substantial in size not being available to be spread across the province, even though I'm certainly not asking you to give out money to programs that don't have the expertise or aren't going to be able to spend it wisely.

I would like to follow up a little bit on the sole sourcing that occurred here. There seems to be a bit of a consistent theme. A week or so ago Monday when we were dealing with court services, we discussed a case where a courthouse renovation morphed from about a \$100,000 sole-source contract into a \$30-million or \$40-million job to the same contractor. I see now again something similar here; I'm not saying those are the same dollar values. But I would like to ask you a little bit more about the Innovation Institute of Ontario. I think it's fair to say it's a subsidiary of the Ontario Institute of Technology—created by who, the ministry or by the trust itself?

**Dr McTiernan:** My understanding of the origins of the Innovation Institute of Ontario is that it was a not-for-profit corporation set up to provide administrative support for the Ontario Innovation Trust. It then assumed responsibility for the research and development challenge fund through our contractual arrangement and provides a range of support services to—

**Mr Mauro:** Who set it up, though? Was the contractual arrangement between the Innovation Institute and the trust or the Innovation Institute and the government?

**Dr McTiernan:** For the administration of the research and development challenge fund, the contractual arrangement was between the Innovation Institute and the government. For services to the Innovation Trust, and the initial purpose for which the Innovation Institute was set up, it was between the Innovation Institute and the trust.

**Mr Mauro:** So there are two contracts, then?

**Dr McTiernan:** Yes, there are separate service arrangements.

**Mr Mauro:** And do we know the value of those contracts?

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**Dr McTiernan:** We know the value of the one we have.

**Mr Mauro:** Can you tell me what that is?

**Dr McTiernan:** Currently, it's \$1.35 million.

**Mr Mauro:** OK. I think this question was asked earlier: There was no RFP or public tender process to try and find somebody to do that work?

**Dr McTiernan:** For the initial contract, no. There are annual—

**Mr Mauro:** This is \$1.35 million annually?

**Dr McTiernan:** The annual allotment has varied, depending upon the negotiated arrangements for services.

**Mr Mauro:** And that \$1.35 million is between the Innovation Institute and the government.

**Dr McTiernan:** Yes.

**Mr Mauro:** So do we know the value of the contract between the Innovation Institute and the trust?

**Dr McTiernan:** No, not offhand, but that is information that, in our disclosure arrangements—

**Mr Mauro:** So if it was of a similar value, then we could estimate maybe another \$1 million or so, so maybe \$2-plus million annually since 1998 or 1999. When was the Innovation Institute created? I'm not sure. It's more recent than the trust.

**Dr McTiernan:** Let me check. It's 2000—

**Mr Mauro:** So we're going on to a fourth year at maybe \$2 million a year. Is this something that we plan on addressing as we move forward, in terms of who gets to do this work? Will this possibly change, Mr Black?

**Mr Black:** I think it's something that we'll look at, yes. That's fair to say.

**Mr Mauro:** I'd like to ask you a little bit about the intellectual property rights as well, if you could expand on that for me a little bit. The whole point of the program is, as I understand it, to create an economy in the province of Ontario. If we don't have control of that intellectual property, clearly the whole focus and point of the program—while it will gain some benefit to the economy, the longer-ranging implications and hoped-for results quite possibly could be lost. Can you once again please give me an explanation of how things stand right now in that regard?

**Dr McTiernan:** Yes. The four research contracts—the intellectual property is vested, dependent upon the intellectually property policy and guidelines of the institution it questions. So the University of Toronto rules would apply for a University of Toronto principle investigator; the Waterloo rules would apply for the University of Waterloo; the McMaster rules would apply for McMaster.

**Mr Mauro:** So their rules would give them some ownership of the intellectual property.

**Dr McTiernan:** Yes.

**Mr Mauro:** What happens at that point? If they own them, then they can sell them? They could export it?

**Dr McTiernan:** Basically, most universities now have business development arms, either as divisions within the university or as incorporated units affiliated with the university. They're basically in the business of looking for investors in the intellectual property and bringing products to market. There are some very successful models out there. In answer to your question—

**Mr Mauro:** I guess my concern—I'm sorry?

**Dr McTiernan:** Sorry, your question was about whether it stays in Ontario.

**Mr Mauro:** Yes, I think that's what we want to happen. It looks like this potentially, even if they're business partners, could be out of country. The work, the R&D, the commercialization could all be exported and not occur in the province.

**Dr McTiernan:** The intent is to keep it in the province.

**Mr Mauro:** I understand the intent; I'm asking if our framework of accountability right now would guarantee that that would happen.

**Dr McTiernan:** No. To be honest, it doesn't, because a lot of the capital needed to invest in the front-end commercialization is not necessarily Ontario capital.

**Mr Mauro:** So is it something we want to chase?

**Dr McTiernan:** I think in a number of different ways, as we look at commercialization initiatives and at cluster building as we go down the road, we need to look at ways programmatically and from a policy perspective of anchoring intellectual property here, because the objective, as you say, sir, is to ensure that Ontario benefits, Ontario grows jobs and Ontario grows value.

One of the initiatives that hopefully will be helpful in anchoring intellectual property into Ontario is to look at commercialization in the context of cluster development. Regional clusters and economic clusters tend to build local networks, local relationships and attract the type of management expertise, the type of capital and the type of support that will allow local initiatives to stay regional.

**Mr Mauro:** We've talked a lot today about the peer review that goes on before an application is approved, and part of an approved application, I think, is supposed to be that there is a guarantee for industry support, a private sector funding component to an approved application. Is that correct?

**Dr McTiernan:** Yes.

**Mr Mauro:** All right. And I believe the auditor's report points out that the existing framework does not allow anybody in the government to know whether or not those private sector components are in fact in place. Is that an accurate statement?

**Dr McTiernan:** I think what the Provincial Auditor is suggesting is that we haven't had a formal record-keeping system to confirm that the private sector arrangements are in place.

**Mr Mauro:** Do we know of any examples where the private sector component has not been there on projects that have been approved?

**Dr McTiernan:** We know of examples where approved projects have fallen apart because of misunderstandings about the availability of private sector funds or the nature of the private sector partnership. Where that has happened, we've taken remedial action, either to ensure that alternative private sector arrangements are in place or the project is terminated.

**Mr Mauro:** I guess as we're going forward here, as my last question, there is, I believe, another \$300 million or so that is supposed to flow to this fund. Is that correct?

**Dr McTiernan:** There was \$300 million identified for the Ontario Innovation Trust in the previous budget. It would need to be reconfirmed.

**Mr Mauro:** All right. What's the status of the trust right now? Given the damning report that we received from the auditor on the bad money management and business management that has gone on with this trust, is it still business as usual today? Are they out there oper-

ating and approving program applications today as we speak?

**Dr McTiernan:** The trust is continuing to respond to the activities, such as federal initiatives for calls for proposals. It is also working with us actively to address some of the accountability and transparency measures.

**Mr Mauro:** Is it approving programs as we speak?

**Dr McTiernan:** Yes.

**Mr Mauro:** All right. Do we think that's a good idea? I'm curious. Has there been any discussion about whether or not the rest of the money will flow until we have a different framework in place that everybody is more comfortable with? Or will the money continue to flow, and then we're all going to hope that the framework gets put in place?

**Dr McTiernan:** I think our attention at the moment is to the framework.

**Mr Mauro:** But programs are still being approved?

**Dr McTiernan:** Yes, for research runs that are already underway.

**Mr Mauro:** Thank you, Mr Chair.

**The Chair:** With the committee's indulgence, could I just ask a couple of questions?

**Ms Broten:** Do you want me to take the chair for you?

**The Chair:** Sure.

**Mr Norman W. Sterling (Lanark-Carleton):** Can I ask you a question in terms of the outcomes? I view this in a very, very different light. I think this is one of the most successful programs a government that I have ever been involved with in my 26 years as a member of the Legislature has ever brought forward. I agree that there are accounting, recording-keeping problems with the way things have evolved over the last little while.

Notwithstanding that, I want to ask you a question: Do you believe that the outcomes we have now achieved through these programs would be very much different if in fact we had been doing everything that the auditor had asked and recommended in his report?

**Dr McTiernan:** With respect to the scientific outcomes of the projects?

**Mr Sterling:** Yes, the benefits that we have received as a society in Ontario.

**Dr McTiernan:** Sir, I don't think the design of the research and the execution of the research would have changed had there been a different funding structure.

**Mr Sterling:** In terms of doing that, you believe very much, then, that the money that we have promised and that we have spent for research in Ontario has been spent as prudently as we possibly could, in terms of taking taxpayers' dollars and putting them toward research for the good of the province, in terms of the goals that we might have to encourage research, development and those kinds of things?

**Dr McTiernan:** I think it can be demonstrated that there is some world-class research happening in Ontario that has benefited from government funding.

**Mr Sterling:** I just want to counter perhaps what Mr Mauro just put forward, that this should be put forward

on a geographic basis. I represent the west end of the city of Ottawa and Lanark county. I've also got a bit of a technical background. I studied engineering a long, long time ago. I do believe that this money and these research efforts should go to where the excellence is, regardless of whether it lands in the area I represent or it doesn't land in the area I represent. I don't think this is the kind of program you can divide on a geographic basis. It would be nice if we could have a research institute set up in Lanark village, which is crying for economic development, but I just know that the kind of project you are looking at can't be manned in that particular community. I just wanted to state that. I counter very much the notion that you can geographically set out this particular program.

1410

**Mr Mauro:** Madam Chair, just a point of clarification: There seems to be an assumption going on on the part of Mr Sterling that I was suggesting this should have some geographic distribution attached to it. I did ask where the money was going and if it was in fact part of their mandate, but I didn't suggest that it should be.

**The Acting Chair (Ms Laurel C. Broten):** I understand that. I don't think we want to get into a debate among those of us who are questioning the folks who are here today to answer our questions.

In terms of the next question on the speakers' list, Mr Zimmer.

**Mr Zimmer:** This question may have been asked while I was out for about 20 minutes this morning; if it was, don't answer it. It has to do with the Ontario research and development challenge fund. That was set up in 1997, a 10-year program to promote research and so on. Subsequent to that, a challenge fund board was created to provide independent advice and recommendations to the government on research and development proposals.

I understand that in 1999 the ministries and the board signed an MOU as to how that relationship was going to work. That MOU was to be reviewed every two years. The Provincial Auditor points out that as of March 2003 those reviews, even the first of them, had not been completed. The auditor recommended on page 171 of the report, on a priority basis, as I understand it, that the MOU be updated between the challenge fund and the ministries. My question is, just as an indication of how things that deal with these governance issues are moving along, as of today, has that MOU been updated?

**Dr McTiernan:** Mr Zimmer, as you will note from our response, we had committed to having that updated by December 31 of last year. We did in fact have a framework MOU completed in December. We're currently going through the legal drafting of that MOU. I believe we're on the penultimate draft or close to the penultimate draft and we will have it in place by the end of this fiscal year.

**Mrs Sandals:** I wonder if we could look at the issue of program monitoring of some of the funds that are mentioned by the auditor, starting at page 179, in terms

of tracking the money once one has determined that a project is there and the requirements for getting information back about how the money is spent. In fact, it would appear that in a lot of cases—I'm looking at the challenge fund right now—it would seem that projects that are supposed to be active aren't necessarily getting money, and programs that are getting money haven't been submitting reports in a timely fashion.

I understand, coming from a university town, that trying to get university faculty members to do paperwork in a timely fashion is like herding cats, so I do have some sympathy here. Nevertheless, when you're dealing with this sort of money, there is a need to make sure that the research funds are actually being spent in the way in which they are intended, because there is also often a huge temptation to spend them in slightly different ways than they were intended.

I wonder if you could talk a little bit about what your ministry is planning to do in terms of cleaning this up, in particular because I take it, in the case of the challenge fund, that the challenge fund has contracted this out to the IIO. So you've now got your oversight function sort of once removed. If you could give us some idea on what is clearly a problem and how you're going to work through that problem.

**Dr McTiernan:** If I could do it in two steps, please. I appreciate your comments about some of the issues involved in the administrative details of the program.

**Mrs Sandals:** I used to do administrative programming at a university and I know administering these things is a nightmare, so I do have some sympathy.

**The Chair:** I think she said "herding cats."

**Mrs Sandals:** Herding cats.

**Dr McTiernan:** I used to run a college, and even in that context it was—the first thing we've tackled, and we're doing it with the Innovation Institute of Ontario, using their record-keeping process, is to actually do a project detail report for every single project that captures the title, a description of the project, some tombstone data about what it's about and whom it involves, and then there is a list of variables from project budget to project flow and reporting procedures and whether we have the reports in a timely manner. That's being kept and updated and it's kicking out information about projects that need to be tracked and monitored. We've received the first comprehensive project detail report that will be used for monitoring purposes. That's work that we'll refine. Administrative processes and procedures will be more tightly defined at the front end of projects to reflect our accountability mechanisms needed here.

The second issue, and I can comfortably talk about this, because it has nothing to do with the Provincial Auditor's report but it has everything to do with the change in fiscal management structure in government, is that accrual accounting will place a different obligation on us as program managers to deal with project principles and the management of the financial flow for projects. We essentially have been managing the research and development challenge fund on a call-for-funds basis. As

the work gets completed, the invoices are sent in and we've been paying upon proof of work.

**Mrs Sandals:** So you're essentially reimbursing for money spent.

**Dr McTiernan:** We're reimbursing for work done. We do flow money at the beginning of projects in many cases. We've been managing the expenditure of funds on a cash basis over fiscal years, and timing hasn't been an issue, but it's been a manageable issue in that context. With accrual accounting, we're going to have to pay for work done in-year and any sort of delay in payment accrues back to the time in which the work was done. So as we structure our contractual arrangements as we move forward, we're going to have to pay much more attention to timing and deliverables so that we manage project budgets within a much more contained time frame. We'll need to look at a variance recording procedure in a very formal sense around that. I don't understand the mechanics of how we'll do that yet, and I'll need to rely very heavily on my colleague for advice on that. That conversion in our accounting process as government drives a different set of requirements around money management, which in turn will feed back into the accountability arrangements.

**Mrs Sandals:** In terms of the beginning of the accountability process, because you can't know whether you're paying for the correct things if you don't know what you're supposed to be paying for, when you set up the initial contract with a successful project applicant, do you in fact lay out quite a detailed budget that lays out exactly what it is that the government will be funding, or how is that—

**Dr McTiernan:** Yes, it is.

1420

**Mrs Sandals:** It's one thing to get invoices, but then how do you recognize whether you should be paying for them?

**Dr McTiernan:** Yes, we do set out a detailed budget in milestones. It's not like a block transfer, "Here is \$2 million; go and work actively and assiduously."

**Mrs Sandals:** OK. The Ontario centres of excellence: It sounds as though they've got their act pretty much in gear.

**Dr McTiernan:** Yes.

**Mrs Sandals:** And then we move on to the research excellence awards, where we get similar sorts of comments to the challenge fund, and that's being administered directly by you, I take it?

**Dr McTiernan:** That's us, the ministry, yes.

**Mrs Sandals:** So the comments you just made would apply there.

**Dr McTiernan:** I feel quite comfortable that we've addressed the issues in the auditor's report head-on with the board, and our administrative processes are in hand to approve record retention.

**Mrs Sandals:** I wish you luck in chasing down the details.

**Dr McTiernan:** The reports, that is a challenge, but we now are tracking the receipt of reports. Sorry, I was

paying attention to the front end, but you're quite correct, Mrs Sandals. It's the back end with the reports that will be an ongoing work in progress, but we are more activist now.

**Mrs Sandals:** In terms of getting an update, not just on the money part but also what has been achieved in terms of the research and the outcomes there?

**Dr McTiernan:** Yes.

**Mrs Sandals:** What I don't see in the monitoring section is any reference to monitoring the program trust in the sense—it talks about the challenge fund and it talks about the centres of excellence and it talks about the Premier's awards. I assume that's because the ministry has a more direct relationship with those things.

**Dr McTiernan:** Yes.

**Mrs Sandals:** When it comes to doing a similar monitoring for the innovation trust, what mechanisms are in place? The auditor seems to be silent on that, or maybe I'm just missing something here.

**Dr McTiernan:** No. Because of the different relationship with the trust, I think it has been treated differently in the auditor's report. But the trust has volunteered and we will be working with them to provide and file annual financial statements, an annual report—

**Mrs Sandals:** Excuse me, if I can interrupt. When that says an "annual financial statement," is that an annual financial statement for the trust or is that an annual financial statement for each of the projects being funded by the trust?

**Dr McTiernan:** I would suspect, as we work through this with them, they're referring here to the trust. In their annual reports we will be working with them on projects. Our interest will be in getting sufficient material in detail on projects that we're comfortable with.

**Mrs Sandals:** But the status to date has been, on these things that you have more control over, that while they've been quite truant in getting the information to you, the information may eventually show up. On the innovation trust side, because of the structure, the information simply wasn't coming at all. It wasn't a question of it being truant; it was just not structurally there at all.

**Dr McTiernan:** I think it may be fair to say that the relationship of the researchers or the project recipients was to the trust. What we need to do and what the trust has committed to working with us on is to ensure that there is a flow-through of that information.

**Mrs Sandals:** But once again we have this situation where the original legal structure in fact didn't provide any accountability reports back to the government, unlike the things that are more directly administered by the government.

**Dr McTiernan:** Correct.

**Mrs Sandals:** Thank you.

**The Chair:** Monsieur Bisson.

**Mr Bisson:** Merci, monsieur Sterling. Comment ça va ?

Before I get to the question, just a couple of comments. In something that was raised I think by Mr Mauro, or was it something you had commented on—there has

certainly been some progress when it comes to looking at ways to increase our R&D in Ontario. But we have to admit we are lagging far behind most other nations when it comes to both the activities in the value-added industries and R&D overall. There's still more that needs to be done, I think you would agree, for the record.

**Mr Black:** Right.

**Mr Bisson:** The other thing is the comment around investing the money from these trusts in geographic areas. For the record—and I'm sure that's not what Mr Sterling was saying. I understood that Mr Sterling was saying that we need to make sure the money goes where the best scientific minds are to do the type of research we need, but we also have to take a look strategically at how we invest those dollars and in what sectors—and I think that's the point Peter tried to make—so that different regions of the province get the attention they need, when it comes to R&D, to establish and build their industries or help grow their industries; for example, forestry and mining in my part of the world, agriculture in other parts of the province, and pharmaceuticals, I would argue, probably in a place like Toronto. Just for the record, I'm a proponent of the fact that you have to have an overall global strategy, as a government, as to where you're going to do this investment, so that there is not necessarily an equal amount of money being invested in the different regions, but sectorally it makes some sense to support all regions of the province so that their sectors are able to do well.

Just on the last comment by my friend Mr Sterling, who is the dean of the Legislature: The argument Mr Sterling made is that even if all of the issues that were addressed by the auditor in his report had not been issues and had been addressed at the very beginning, does it change anything as far as the overall outcome in programs? I want to remind people of an old saying that the results never justify the means. At the end of the day we need to make sure there is proper accounting for any dollar.

My question is to the auditor. I'm not sure you can even answer this, but we have all kinds of agencies that we fund as a government through various ministries. I understand most of them are audited internally. If you transfer money to a children's aid, the children's aid society won't get audited by—

**Mr McCarter:** They have a financial statement from an outside auditor; that's correct.

**Mr Bisson:** Exactly; they have outside auditors. This situation we had with the ministry, where we had trust funds in which we didn't have a clue as taxpayers what was going on, has that happened in other ministries, potentially?

**Mr McCarter:** I'd have to say this particular trust fund was somewhat unusual in the way it was set up. We had expressed some concerns back as far as 1999 with respect to it. Also, it gets into some of the accounting issues with respect to it. I gather from what the ministry is saying, they're going to be giving us access. They're going to be providing information. They're going to be doing basic—

**Mr Bisson:** That's fair, but my question is, could this situation exist in funding from other ministries and other agencies that are not necessarily audited as stringently as we think they should be? Your powers as an auditor go only so far.

**Mr McCarter:** That's right. We don't have access to the OIT. Theoretically, could it happen? Yes, it could. If there were significant dollars involved, I think we would have picked it up on our radar screen.

**Mr Bisson:** I'm just trying to get a sense of it, because my sense is that there are probably other areas in government where a similar situation could be happening. I guess it builds the argument as to why the auditor should have the right to audit any dollars that are disbursed from the provincial government. I think most of us, as members, would agree with that. I know the previous government didn't agree, but I think—you were going to say something?

**Mr McCarter:** I forget the bill number, but the current government has actually tabled a new act which would certainly extend our powers into following the dollars out in the broader public sector.

**Mr Bisson:** That's why I'm just speaking in support of that. I'm just saying I'm hoping—it wouldn't be fair to say what the Chair was indicating, but I would hope all members would support that, because I think this is a good example of where the auditor can do work that's for the public good. Again, I want to put on the record, I don't think you guys went out and tried to do anything wrong; I think you were put in a situation—quite frankly, the government should never have put you in that position. The advice given should have been taken by the government. I don't believe that you didn't give the government advice on how to properly account for that, because I know you're professional in what you do.

One of the ways we can safeguard so this doesn't happen again is to make sure that our auditor has the right to audit those things in a much better way so that if these kinds of things happen, there is at least an oversight to the decisions at the end and we don't find ourselves in that—

**The Chair:** Just a point, Mr Bisson: I don't think you should come to a conclusion for the committee in terms of where everybody sits on it.

**Mr Bisson:** I stand corrected.

1430

**The Chair:** It would depend on the quantum of the transfer as to whether or not various members of the committee might feel differently if the government was giving a transfer of 5% of the total of a trust. They might say, "We don't think the Provincial Auditor should be there," or whatever. There are a lot of variables in it.

That's why I was shaking my head in the negative when you said that if there are any government dollars going in, then the Provincial Auditor should have as much access as he should when there's 100% dollars. I think there might be a debate on that in this committee. I think we heard that on days when you were not here, when we were discussing other business.

**Mr Bisson:** I hear you and that's fair, but all I can tell you, in my four terms that I've been here I've become more and more convinced—I remember this argument when I first sat on public accounts as a new member in 1990. I remember this argument being raised by the predecessor to Mr Peters—I forget the previous auditor's name.

**Mr McCarter:** Doug Archer.

**Mr Bisson:** That's right. Doug Archer was raising the whole issue of wanting to extend his rights as an auditor. I remember the natural knee-jerk reaction of myself as a new member was that I wasn't too sure that it needed to be done. I can tell you, after 14 years in this place, I've become convinced that the auditor's office is one of the most important offices we have for making sure that the decisions we make as politicians and carried out by our ministry staff—I don't call you "bureaucrats" because I think that's a bit demeaning—needs a great amount of oversight because it may be that government, in its zeal, in order to advance a particular policy issue, will be a little bit too zealous in trying to enact something and may get tripped up and may set themselves up and may set up the taxpayer for something that, quite frankly, they shouldn't be set up for. Anyway, I look forward to the debate on that new bill because I think that's something that, over the years, I've very much changed my mind about.

I just have to ask you this one question. I don't want to be combative. I don't want you guys thinking I don't like you, because I think you do a good job. To the deputy: I find you have a good sense of humour, so that helps. In one of the things the auditor says that the auditor's staff did not receive "adequate access to all the information" they requested from the ministry. It goes on to say that the auditor asked for information; you guys didn't provide it all. It was your opinion that the auditor didn't need it. What in heck was that all about?

**Mr Black:** I'll take that one. I don't know if you were in the room when I started off this morning, but I phoned Mr McCarter on Friday and said, "Let's clear the air on this one." I think there were some mistakes made at our end. We followed protocols that probably slowed us down. We've changed those protocols. We've streamlined our processes. My commitment to the auditor is to essentially do better the next time a request like the one that he put through last fall comes.

**Mr Bisson:** I believe your honesty and integrity on that. I've talked to the staff of the auditor on this and they seem to be satisfied that you're going in that direction, but what were people thinking of? What was in people's minds not to give the information to the auditor? Was it because you were caught up in a certain way of doing things?

**Mr Black:** I think it's partly that. I think it was the breadth of the request; busy people, busy time, lots on the go; one of those things that just—

**Mr Bisson:** But you guys had been audited before, as a ministry?

**Mr Black:** Have we?

**Mr Bisson:** I would think it wasn't the first time.

**Mr McCarter:** We'll fix that.

**Mr Bisson:** For the record, the auditor says, "We'll fix that."

**Mr McCarter:** Just kidding.

**Mr Black:** I guess I asked for that one, didn't I?

**Dr McTiernan:** I believe it was the first science and technology audit. We were slow on things, particularly because we were dealing with records across two ministries. We'd just moved from energy, science and technology into the old ministry of enterprise, opportunity and innovation. We also were working, we thought, appropriately within protocols that had been set out for processing and forwarding information. It was slower than anybody would have liked.

**Mr Bisson:** But you do understand the repercussions of something like this. God forbid there was any money that was spent that wasn't supposed to be spent, or was spent inappropriately. That is a pretty damning indictment. It would lead somebody to believe, if something as big a fiasco as what we are seeing federally with—what do you call that fund, again?

**Mr Black:** The sponsorship fund.

**Mr Bisson:** The sponsorship fund. Imagine being in a situation with something of that magnitude happening within one of these programs and you see something like this. Somebody could make the argument that the bureaucracy was trying to protect the government. That's why I kept on coming back to it. I'm not saying that happened, but that's how somebody could construe this. It seems to me that, hopefully, you've learnt a lesson out of this thing. When the auditor's office calls, you've got to be pretty darn co-operative or else you're going to get nasty people like me on committee and, God forbid, the public pretty mad. I fail to understand how a ministry as professional as yours—because I've dealt with you guys for years, and I say that in all honesty—would take that position. I'm just wondering, given your answer—I don't know if you want to expand on it—how you can ever put yourself in that position.

**Mr Black:** That's a fair comment, Mr Bisson, and I appreciate your quite kind remarks about the bureaucracy. As the rookie in the ministry, I've come to appreciate exactly what you're saying about the professionalism.

I will also say that day five on the job was when I picked up the phone and talked to Mr McCarter, precisely for those reasons. I wanted to clear the air to make sure it was absolutely clear that this wasn't intended and it won't happen again, for the very reason that you point out: that the optics of it are probably worse than what's really happening.

**Mr Bisson:** That's the problem. The optics of this report are pretty damning. I just have to hope that nothing ever comes out of this, in the sense of expenses or how money was used. If it ever comes out that there was a problem, I think your ministry and your political masters—they're no longer there, but there would be some questions that need answering.

Just to your document that you provided to the auditor, and through him to us, you've got "Status of Ministry Actions." In a whole bunch of places—I could take the time and get cute and ask you a single question on every one of them. On most of them you're saying that by March 2004, you're going to have most of this stuff. Can I expect by March 2004 that you've actually done what you said what you were going to do in your document given to us, dated February 13, 2004?

**Mr Black:** Yes.

**Mr Bisson:** So I'm not going to see you before the auditor or this committee again with the same kind of situation?

**Mr Black:** I didn't know I had a choice. That's our intention, to actually beat those timelines as much as we can.

**Mr Bisson:** Are there any of these timelines in any of these programs—again, I don't want to go through every one of them, because we could be here a whole day doing that—that you're concerned that you may have to take a little bit more time with?

**The Chair:** We asked this morning that he would refine those times and give them to us.

**Mr Black:** In fact, in many cases beating the timeline that we've put here, because there was one that talked about the strategic overview for science and technology that was a year from now, which is far too long. We're bringing that forward.

**Mr Bisson:** For those that may be longer than March 2004, what's the longest we can expect? Just so I understand what you said, we're going to get an update on each of these things of where they are time-wise?

**The Chair:** No. The deputy said that he was going to do better than these in his original statement, so I asked him to provide us—go back on reflection and say, "When can you deliver?" He's going to provide that to the committee.

**Mr Black:** Right.

**Mr Bisson:** So you're fairly confident that most of these timelines can be met, but won't be next year or anything like that?

**Mr Black:** Right. We're moving those ones forward, where it is indicated too far off in the future.

**Mr Bisson:** I guess that's it for me.

**Ms Broten:** I have a couple of questions about the IP ownership. You indicated earlier that that was governed, in many respects, by the post-secondary institution policy. Would there ever be circumstances where the applicant or the recipient of the funds would not be governed by a post-secondary institution policy?

**Dr McTiernan:** With the way in which our current programs are structured, the money flows through a recognized institution. To try and grapple with your question, one area we are going to continue to have to look at how IP is managed is where we get more and more institutions involved in multi-institutional research projects. That's beginning to happen quite a lot now in the biomedical area, in particular, but in other areas as well. So there'll always be a need to address the application of

the policy and to update to best practices as new relationships and new research networks are built.

**Ms Broten:** Do we take the step of confirming that the post-secondary institution has a policy with respect to IP ownership that will govern the process? Is that something that we undertake to confirm?

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**Dr McTiernan:** The reason I hesitate on that is I'm assuming we do, because most of them are so sort of out there with their IP policies. Let me just check on some of the institutions that receive funds but not on a regular basis.

Yes, we do.

**Ms Broten:** In response to an earlier question, you said that the design of the research would not have been different, and research benefited from the funding.

**Dr McTiernan:** Yes, in terms of the scientists' construction of their proposals and what it is they would look at.

**Ms Broten:** Certainly none of us around the table would suggest that's not a good outcome. It is certainly a good outcome, but as someone who is looking after the interests of the greater public, one of the outcomes that we need to do a better job measuring is what the outcomes are for the benefit of the province. Are we getting those jobs? Do we see cluster development? Are we seeing economic development? That remains an area of concern in terms of, "We can't currently measure that now, because we have not collected that type of information." Correct?

**Dr McTiernan:** It's a concern, if I could offer a comment, in two ways. The measurement of the impact is something that we need to continue to work on. The other area is that as we begin to see researchers and networks of researchers developing, with the private sector, we're beginning to uncover and understand better some of the factors other than the research outcomes that are affecting commercialization and contribution to jobs and to cluster development, access to capital, having research supported not just to the finding stage but to the proof-of-stage, so that you take the findings and you develop a proof of concept to a point where it might be much more attractive for an investor or for an industry looking at commercial application.

So there are a number of issues related to the research endeavour but not specific to it that we need to address both from a measurement and from a support point of view.

**Ms Broten:** Up to this point, that's been something that we haven't really focused on, is my understanding.

**Dr McTiernan:** The initial thrust in research across Canada, actually, in the late 1990s and early parts of this decade was to build research capacity and to step up to a level of activity that was commensurate with activity that was taking place elsewhere across the world: in Europe, in the United Kingdom in particular, and in the United States.

With a lot of work now resourced and under way, the questions naturally arise as projects reach their maturity: What are the benefits? What are the applications? What

are the next steps? I think we're well positioned in Ontario to look at commercialization in a number of areas because of the research strengths in Ontario that have come out of the history of our institutions.

**Ms Broten:** Sure. I notice on your chart that one of the things under section 6.2, which is relating to this effectiveness reporting, is that the ministry is undertaking the interjurisdictional review and looking for best-practice approaches. I would assume that this is an issue that we're not the only jurisdiction grappling with, and I was wondering whether or not you could share with us what jurisdictions would receive this best-in-class award that we might want to look at and recognize the measurement criteria that they've put in place.

**Dr McTiernan:** There are two examples that I'll use. I know a little bit more about one—but I'm not an expert on it—than I do on the other.

Massachusetts is an example of a jurisdiction that, through government and through some of its associations, has paid attention to measurement and outcomes in research and has done a lot in the biotech, biomedical area in that regard. We have been looking to what's happening within institutions, what's happening in the state and what's happening with the state government on measurement, on indices of performance, but also on how they support the research endeavour.

We're also beginning to pay more attention to the United Kingdom, which has a strong focus on performance measurement and results reflected in its research funding programs, but also in a lot of other activities that are undertaken by the UK government. They have had a number of years of experience now. In the research area they seem to have shaped both the focus and the quality of research in a number of institutions by taking a results-based approach to the administration and management of their programs.

**Ms Broten:** One last question: Are there other jurisdictions we can look to with respect to what is now our understanding that research is great, but now we need to bring that research to the market and capitalize on that for our provincial investment? I'm sure other jurisdictions are battling with that same challenge. Are there vehicles or mechanisms out there that other jurisdictions have put in place to make sure they support the bringing of the research to the marketplace?

**Dr McTiernan:** We are in discussions with Pennsylvania and North Carolina, and we have contact in the

ministry with Georgia and a number of US jurisdictions that have paid attention. We are beginning to look at some of the state programs and initiatives that may not be well-advertised but that are focused for a specific period of time on a specific question around the commercialization and growth agenda, and looking at how they can inform options for us as we move forward.

**Ms Broten:** Thank you.

**The Chair:** Do we have any other questions at all?

I'd like to thank you for coming today and invite you to write to the committee for any clarifications you might think of after the committee meets. The researcher will be doing some work before March 22.

**Mr Bisson:** Chair, I have a quick question after you're done.

**The Chair:** OK, sure.

We won't really be deliberating on the report until the House resumes on March 22, so you do have some time to respond; during that period between now and March 22 would be our preference.

Yes, Mr Bisson?

**Mr Bisson:** Just a quick question. It comes back to what I asked earlier this morning—

*Interjection.*

**Mr Bisson:** No, it's OK; it's nothing bad. It's always the last question you worry about, right? I just thought I should let you let your guard down. Now I'll go after you. No.

In regard to staffing, one of my concerns is that your ministry, like MNR and a few others, undertook a pretty big hit in reductions of staff. In your division you're at about 50 people. In your view, is that adequate to really monitor and do what has to be done when it comes to administering all these various trusts? Are you guys finding it a bit of a challenge because of staffing levels?

**Dr McTiernan:** I think one of the things we've looked at as we've been responding to the Provincial Auditor's report is how we can better deploy the folks we have working with us on some of the priority areas. Alignment with program management and administration issues is something we are actively looking at.

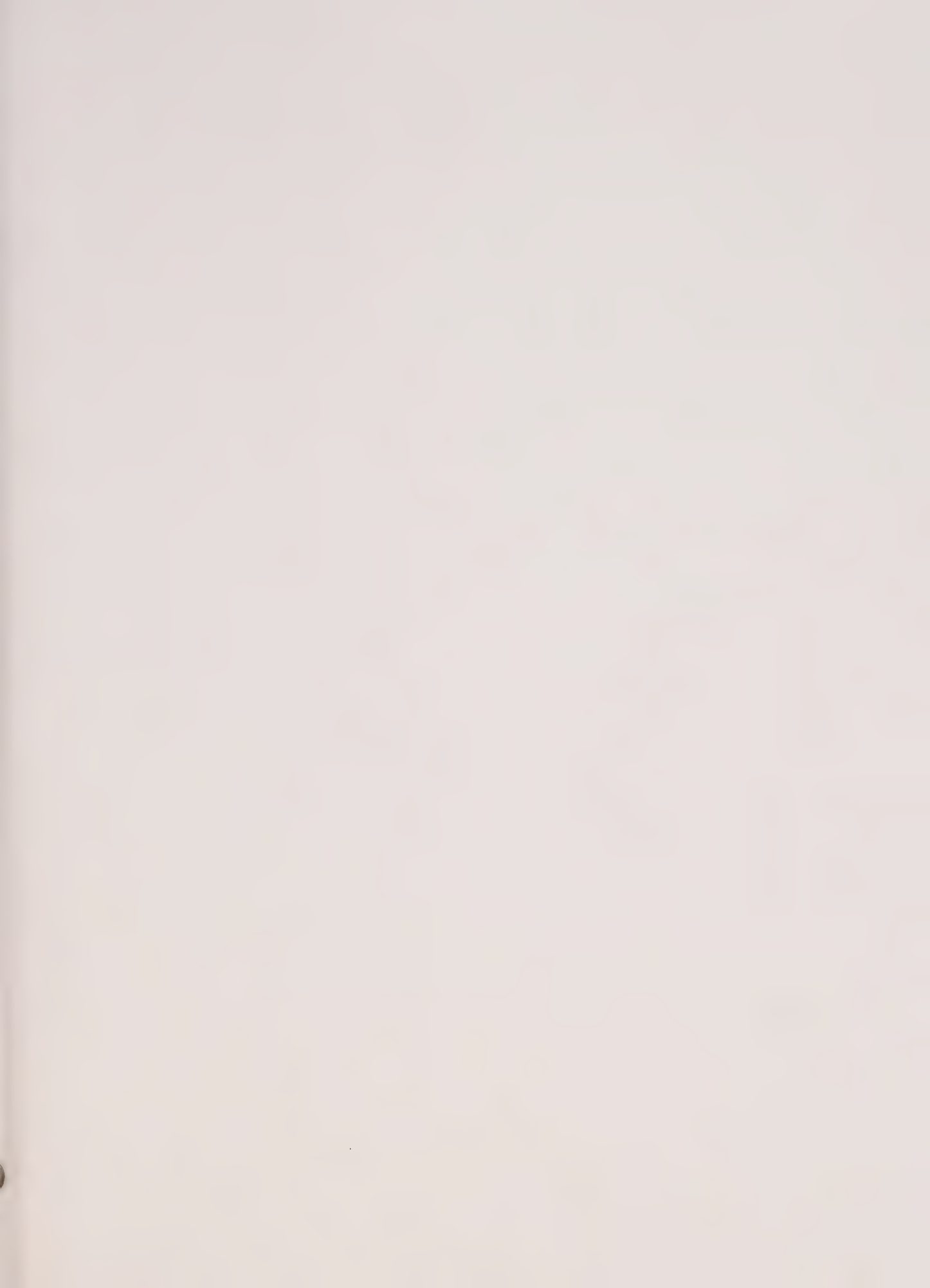
**Mr Bisson:** That then reflects back to you.

**Dr McTiernan:** Yes.

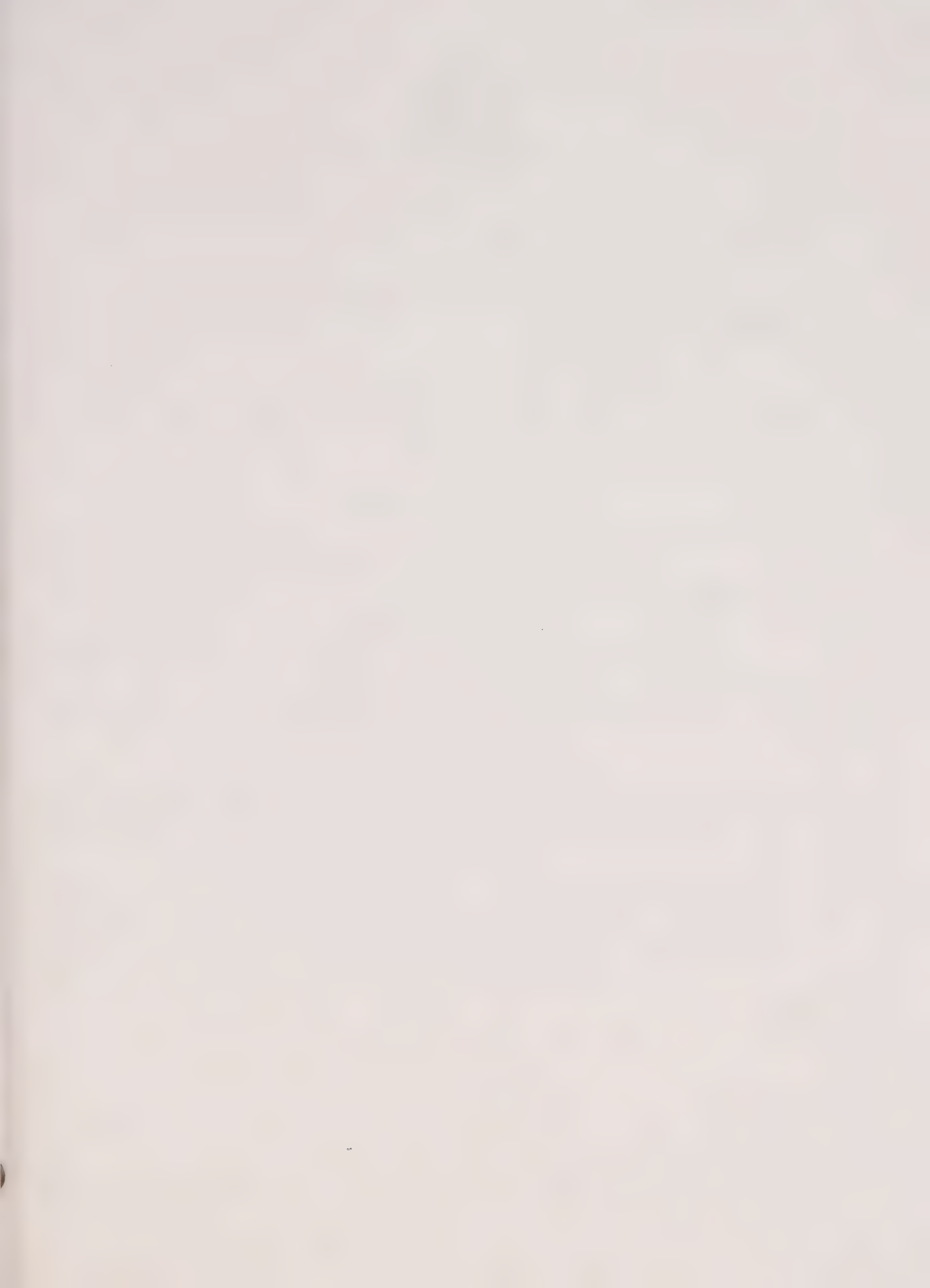
**Mr Bisson:** OK. Thank you.

**The Chair:** We're adjourned. Thank you very much.

*The committee continued in closed session at 1448.*







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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 18 February 2004

# Journal des débats (Hansard)

Mercredi 18 février 2004

## Standing committee on public accounts

2003 Annual Report,  
Provincial Auditor:  
Ministry of Education

## Comité permanent des comptes publics

Rapport annuel 2003  
Vérificateur provincial :  
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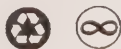
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Wednesday 18 February 2004

Mercredi 18 février 2004

*The committee met at 1040 in committee room 1, following a closed session.*

2003 ANNUAL REPORT,  
PROVINCIAL AUDITOR  
MINISTRY OF EDUCATION

Consideration of section 3.05, curriculum development and implementation.

**The Chair (Mr Norman W. Sterling):** Good morning, Deputy Herbert. Thank you very much for coming to the committee. It's our tradition to allow you to make some opening remarks, and then the committee will go to questioning thereafter.

Microphones come on automatically. The Hansard reporter turns them on. You can push the button to turn it off, though. If you'd put the microphone fairly close to your mouth, one of the members of the committee—I shall not divulge which one—

**Mr Rosario Marchese (Trinity-Spadina):** The old ones, whoever they are.

**The Chair:** One of the older ones would appreciate hearing it through the speaker system.

**Ms Suzanne Herbert:** Thank you, Chair. I'm Sue Herbert. I'm the Deputy Minister of Education, and with me today are Judith Wright, who is the assistant deputy minister of strategic policy and program, and Kit Rankin, who is the director of curriculum. There will be no teasing from Mr Patten.

I have prepared remarks. I don't think I'll use the full 20 minutes, and hopefully I won't bore you too badly, but I do have a few things that I would like to put on the record as part of the introduction to public accounts here this morning.

Thank you for giving me this opportunity to update you on the ministry's responses to section 3.05 on curriculum development and implementation of the annual report of the Office of the Provincial Auditor. This was the first provincial curriculum audit to take place since 1993, and it resulted in five insightful recommendations. We've put considerable effort into addressing these recommendations and will continue to do so, but before I address the ministry's specific responses, I would like to provide a bit of context on the current educational environment in Ontario.

I've been the Deputy Minister of Education for the past four years, and I must say that Ontario's curriculum

has undergone significant changes even over that brief time frame, though curriculum reform began three years before I arrived.

In 1996, following recommendations tabled in the Royal Commission on Learning, the ministry assumed full responsibility for curriculum policy and undertook the development of a province-wide curriculum, which resulted in the publication of: 18 elementary curriculum policy documents for grades 1 to 8, nine in English and nine in French; the kindergarten program document; 28 grades 9 and 10 secondary curriculum policy documents, 14 English and 14 French; and 35 grades 11 and 12 secondary curriculum policy documents, 17 English and 18 French.

All of these curriculum policy documents contain detailed learning expectations describing the knowledge and skills students are expected to acquire at each grade. Each curriculum policy document also includes an achievement chart, which provides the framework used for assessment and evaluation of student achievement. These descriptions of levels of achievement were introduced to help ensure consistent assessment and evaluation processes across the province, along with a provincial report card based on these standards.

Elementary curriculum policy documents for both French- and English-language schools were introduced for all grades in September 1997 and 1998.

Secondary curriculum reform, which included the introduction of the Ontario secondary schools grades 9 to 12 policy and the four-year secondary curriculum policy documents for all disciplines, was introduced one grade at a time, starting with the grade 9 curriculum in September 1999 and ending with the grade 12 curriculum in September 2002.

I am pleased the auditor's report recognizes that the process for developing the new curriculum was appropriate and that most educators interviewed considered the curriculum to be a high-quality product.

Implementation of provincial curriculum policy and programs is a shared responsibility among school boards, principals and teachers. To support the implementation of these system-wide changes, the ministry provided significant resources. Approximately \$472 million was allocated for textbooks and resources, support materials and funds for training teachers. Orientation sessions for each of the new curriculum policy documents and subject-specific train-the-trainer workshops were offered prior to

the implementation of the curriculum for grades 9 to 12 over a four-year period.

Support materials funded by the ministry and targeting the curriculum policy documents and its new achievement charts include exemplars for grades 1 to 12, course profiles for grades 9 to 12, elementary curriculum units for grades 1 to 8, and the electronic curriculum unit planner for grades 1 to 12.

Exemplars are samples of student work demonstrating the four levels of achievement and are used by teachers for assessing students. A survey conducted by the Council of Directors of Education in June 2002 indicated province-wide teachers' approval of these documents, and the ministry's exemplar project is ongoing in other subject areas.

Course profiles at the secondary level are a series of second-generation documents with detailed examples of learning activities and assessment strategies. These were developed for all courses for grades 9 to 12 and sent to schools in paper and electronic versions, as well as posted on curriculum Web sites.

The ministry also funded development of the curriculum unit planner, an electronic tool that helps teachers create individual lesson plans and units of study. Teachers across the province can develop their own units, or download ones developed by the ministry or by their school boards and modify them to specifically meet their students' needs.

It's important to remember that curriculum implementation is an ongoing process and not a single event. We expect that teachers, who are highly skilled professionals, will continue to hone their skills and continue to assume personal responsibility for acquiring the professional learning they need to help them remain effective and competent educators.

Given the scale and pace of changes introduced into the system, a number of the auditor's recommendations related to training and implementation were a direct result of the pace of implementation. There is no doubt that the ministry and the sector were challenged by the pace of change, particularly in the elementary reform in the beginning years as implementation began without all of the support resources in place. Now, in relation to textbooks and resources, as the auditor indicated, textbook availability is being resolved over time as publishers introduce new textbooks and other learning resources.

In terms of training and support, although large-scale implementation initiatives are over, we are still providing significant levels of support to teachers to meet targeted priorities and needs. We have also put in place a systemic process for curriculum review and revision to ensure that curriculum changes take place in an evolutionary manner.

Furthermore, a number of the auditor's recommendations focus on accountability. As the report itself points out, "... school boards are responsible for ensuring that their staffs comply with provincial policy on education and for helping teachers to improve their teaching practices and to deliver the curriculum effectively. Principals

are responsible for supervising and evaluating the performance of teachers in providing the appropriate instruction for their students and in evaluating student work and progress."

Over the coming months, our key priorities as a ministry include achieving the government's education "excellence for all" agenda, improving student achievement and building confidence in our public education system. With these goals in mind, today I want to talk about the auditor's recommendations and provide you with an update.

The auditor's first recommendation related to the implementation of the curriculum, the speed of its implementation, and the need for more specific implementation training. A continued range of supports for curriculum changes will be introduced systematically. This support will be timely, measured, focused and ongoing.

To this end, an ongoing five-year cycle of review of the Ontario curriculum, known as "sustaining quality curriculum," or SQC, was initiated in February 2003. The first full year of this ongoing five-year cycle of review began last September. This review process will ensure that the curriculum remains current and relevant. It will also systematically build in monitoring of how the curriculum is working, what revisions need to be made and how to implement any changes in a timely fashion.

Revisions to the grades 1 to 8 social studies-history-geography curriculum, the first subject reviewed, will be completed by this spring. We are currently seeking input from our stakeholders on a draft of these revisions.

The next phase of review has also begun for the English-language and French-language curriculum in mathematics for all grades, career and guidance education for grades 9 to 12, and business studies for grades 9 to 12. Canadian and world studies grades 9 to 12 implementation is planned for September 2005.

As the report indicated, the ministry has spent over \$300 million on textbooks and learning resources to support the new curriculum from kindergarten to grade 12 in both English and French.

As a result of ongoing textbook development, the ministry was able to make an increasing number of grades 11 and 12 textbooks available for French-language core and non-core courses for the 2003-04 school year. More recently, the decision was made to provide funding of \$2.6 million to French-language school boards for the purchase of textbooks and other learning resources in French for all grades by March 2004.

The ministry continues to meet with the curriculum implementation partnership and ad hoc committee, which is chaired by myself and Michael Fullan from OISE, comprised of key education stakeholders, to help determine appropriate areas to support effective curriculum implementation.

#### 1050

I'd like to point out that boards have developed action plans for students at risk, which include a commitment to provide specific professional opportunities related to

literacy for the 2003-04 school year, in response to the targeted funding to boards for the at-risk initiatives. These action plans include commitments for teacher professional development for literacy and numeracy to take place in the 2004-05 school year.

In addition, our early reading and early math strategies now emphasize the importance of focusing on teaching reading, writing and math skills to improve the learning and achievement of students. To support the early reading and early math strategies, we are implementing a training program for teachers of children in kindergarten to grade 3, as well as principals, which runs until the end of this school year. This training focuses on effective instructional strategies, using assessment information and other school data to set improvement targets and guide instruction, and on instructional leadership.

In addition, ministry staff is working with teams in 43 schools to improve reading achievement of JK to grade 3 students, as well as to improve these schools' improvement planning techniques. Best practices from this initiative will be shared across the system by December 2004.

Boards have developed plans to ensure secondary school principals and all teachers of the grade 12 Ontario secondary school literacy course, or OSSLC, will receive individual training in the new course. Training is taking place throughout this school year. To support teachers in the implementation of the OSSLC, the ministry has developed a Web site that will go live very soon.

A wide range of targeted implementation supports—what we call TIPS—are now available as well. These include grades 7 to 9 applied mathematics, released in December 2003 and posted on the Ontario Curriculum Clearinghouse Web site; \$2.45 million in funding to support follow-up training in boards for grades 7 to 9 mathematics; implementation supports for French-language schools, consisting of approximately \$3.5 million in funding to develop resources and offer training to boards, including teaching modules in math for grades 1 to 8—19 of 40 have been sent to school boards—to be completed by 2005, and learning materials for grade 9 applied math, sent to school boards in 2003.

Approximately \$7.7 million in funding will be transferred to both French-language and English-language boards to allow them to continue training teachers in the use of the electronic curriculum planner, student assessment and other ongoing priorities.

As promised in the report, we are working with publishers and other interested stakeholders to ensure they have the necessary lead time to develop appropriate resources to support curricular revision. Members from publisher organizations attend the Liste Trillium advisory committee in its twice-annual meetings, as well as stakeholder information sessions on specific curriculum initiatives.

The auditor's second recommendation addressed the need to ensure the provincial curriculum meets the needs of all students, in particular struggling students. These are students at risk of not obtaining the necessary know-

ledge and skills to succeed in subsequent grades and not meeting the requirements of the secondary school diploma. It also addressed the need to develop processes that would enable boards to effectively track these students. As we responded in the report, "Addressing the learning requirements of students at risk of not succeeding is a ministry priority."

We know that over 36,000 students did not pass the OSSLT at its second administration. Although 85% of students enrolled in academic courses passed both the reading and writing sections of the test, only 38% of those enrolled in applied courses and only 14% of those enrolled in locally developed courses successfully passed both.

The previous government introduced the OSSLC, which began to be offered this past September as an alternative support and opportunity for students who failed the test. We are currently monitoring the implementation of this course.

This group of students, those who failed the test, is a very large issue for all education jurisdictions. The Royal Commission on Learning, in 1994, indicated that approximately 30% of children left the system without a diploma. Based on 1993 data, 58% of grade 9 students taking the old general level courses left school without a diploma, and 65% of students taking the basic level courses did not obtain their diploma.

The debate about creating a system that expects high standards for all and the need for system mobilization to support students who, for a number of reasons, do not succeed and/or leave early, has been going on for decades. It feels sharper today because of the economic narrowing of opportunities for these students if they leave school without a diploma, and because they can now be clearly identified and monitored in the education system in this province.

Last December, the government announced \$112 million in support to school boards for students with extra challenges. This funding consists of \$95 million to help students from low-income and single-parent families, as well as recent immigrants, and \$17 million for services to students whose second language is English or French.

The government is allocating \$50 million annually to school boards to implement the recommendations in the reports of the expert panel for students at risk in Ontario and the program pathways for students at risk work group. Specialists have been hired in every board and are working closely with the ministry. These at-risk leaders received expert training in the spring and fall of 2003, and an additional session is being held this month. In addition, Ontario's principals' associations received approximately \$1.4 million through the ministry's professional learning fund to develop professional learning courses, which include courses on effective practices to support at-risk students.

Requirements to ensure that boards identify measures that will be used to assess how effective their local initiatives for students at risk are in improving student performance will be established and reported annually. In

addition, processes to identify, track and monitor at-risk students in remedial programs are underway. Boards are tracking students who have been unsuccessful on the Ontario secondary school literacy test and who must complete it in order to graduate.

Working together, a number of branches in the ministry have established appropriate accountability measures relating to the funding for board action plans related to students at risk. These measures were initiated in 2003-04 and will be further refined in 2004-05.

The auditor's third recommendation focused on consistency and quality in implementation of curriculum and assessment policy. Again, as the report itself points out:

"School boards are responsible for ensuring that their staff comply with provincial policy on education and for helping teachers to improve their teaching practices....

"Principals are responsible for supervising and evaluating the performance of teachers in providing the appropriate instruction for their students and in evaluating student work and progress."

Having said that, the ministry has a role to play in ensuring greater consistency in student assessment and evaluation, and enhancing board accountability. For instance, as part of the sustaining quality curriculum process, achievement charts that set provincial performance standards are currently under revision. These will be finalized later this year to create greater consistency across subjects and grades.

The ministry contracted the Council of Ontario Directors of Education to help us develop documents that provide implementation support for the provincial secondary assessment policy in English and French. Boards have received funding to offer training on this initiative. We have begun to develop a similar elementary resource document that will be released and ready for training in 2004-05.

School boards and schools have already received samples of student work, or exemplars, and the publication of these documents is ongoing in both French and English.

We recognize the importance of research and training, as well as sufficient and reliable information, to support effective decision-making and improvement planning processes. The new Ontario school information system, ONSIS, which is targeted for implementation over the next two years, will help support the development of accountability measures for schools, school boards and the ministry. This will be a complex, multi-year project, but it will pay off in our ability to act on real information about our schools and students.

Closely tied to this project is implementation of the Ontario education number, or OEN. A student identification number assigned by the ministry to students across the province will become the key identifier on student records throughout a student's school career. Over two million OENs have already been assigned to students in 102 school boards and school authorities.

The auditor's fourth recommendation refers to standards for student information systems, the effectiveness of

improvement planning and research on key issues. As I have just indicated, ONSIS, the ministry's new data collection system, will become the foundation for generating more accurate, reliable and complete statistics, providing a better basis for assessing needs and for developing policies to meet those needs. In addition, the ministry has trained board teams on how to use assessment data to inform improvement planning, and we have sponsored three regional symposia on data-driven decision-making for school improvement.

An RFP for research to investigate effective strategies to improve boys' reading and writing skills is being developed and will be posted in June. The research on this will commence in the 2004-05 school year and continue for three years.

The fifth and final recommendation highlights the need to assess the effectiveness of the annual education plan and the teacher adviser program. Students in grades 7 to 12 are now expected to prepare an annual education plan. Students in grades 7 to 10 prepare their plan with the assistance of their parents, guidance counsellor and teacher adviser. The plans are optional for grades 11 and 12.

We agree that the annual education plan and teacher adviser program are important tools to help students achieve their educational goals. Ministry policy already requires school principals to conduct a survey every three years with students, parents, teachers and community members to determine the effectiveness of their school's guidance and career education program. To assist in the implementation of this new requirement, the ministry has helped schools and school boards by sponsoring teacher and administrator training, and developing and distributing support resources, including model program effectiveness surveys in CD-ROM format.

In addition, the ministry will undertake a review of the implementation of the annual education plan and teacher adviser program in Ontario schools. Options on the review methodology have been developed, and the review and recommendations will be completed by the end of the 2004-05 school year.

In conclusion, I would just like to reiterate that we appreciate the constructive recommendations by the Provincial Auditor and the working relationship that my ministry and his office have had throughout this audit. Thank you.

**1100**

**The Chair:** Thank you, Deputy. I think you took 19 minutes.

**Ms Herbert:** I said it would be under 20.

**Ms Laurel C. Broten (Etobicoke-Lakeshore):** I want to ask about what is a heated issue in my own community among students, and that is the massive number of students who are being frustrated by the current curriculum. I don't know whether the reports that have come forward and are across the media are accurate, with estimates of as many as 45,000 kids unlikely to graduate because they failed too many courses in grades 9 and 10, but whatever the number is, there are too many kids in

that circumstance. What they ask me—and I'm going to pose the question to you—is, how did we get here? How did we get to a circumstance where there are so many kids across this province who want to graduate and are telling me, "I simply can't. I can't do the courses that are being asked of me"?

**Ms Herbert:** I might just start with the development of the secondary school reform and how it was constructed, and then we might talk a little bit about what we know about credit accumulation for kids in grades 9 and 10, which was addressed primarily through some of the work the Queen's study did. Kit, can I ask you to address that?

**Ms Kit Rankin:** I'm Kit Rankin, director of the curriculum and assessment policy branch. The development of the new curriculum in Ontario began with a great deal of input from parents and community members, as well as educators. The ministry was urged to ensure there was a high standard in the curriculum in Ontario that would challenge students and prepare them well for their futures. There was also benchmarking against curriculum in other jurisdictions. As a result of this work and the accompanying research, teams of curriculum writers, practitioners from the field, worked hard to develop a curriculum that would be appropriate for Ontario students.

Since the introduction of the curriculum, from time to time people have certainly indicated a concern that some students are struggling, and the Queen's report does indicate that in certain areas—certainly in the applied program—students are having some difficulty at this time accumulating credits. As we move to the sustaining quality curriculum initiative, we are examining this issue.

**Ms Broten:** I have to say, with the greatest respect, that really doesn't answer the question about how we got to this difficult circumstance. We studied it; we talked to people. It's really not news to those of you who are much more expert than I am that it's been a number of years that we've had teachers, parents and students critical of the consequences of these changes on a particular group of students: at-risk students. These issues were raised a long time ago. I know a report came out in March 2003 saying we need to have recommendations for supporting students at risk. My question is, why was this not included as a component early on? There had to have been an understanding that if you're going to increase the level of curriculum, you're going to leave some students behind. How can we not have dealt with that at the time?

**Ms Herbert:** The actual implementation of the grade 9 applied curriculum, which is the curriculum you are referring to, began three years ago. One of the reasons we put the Queen's University study in place was to actually monitor and see whether we had the curriculum at the right level and whether it was going to work or not work. We now have three years worth of data, and clearly we have some issues with the curriculum, which is why we're moving up the review of the mathematics curriculum in particular and fast-tracking that and why we put in place the supports through the OSSLC and the remedial

supports I talked about for grades 7 to 12 as a response to what is essentially the third year of curriculum reform.

In the Queen's study, the projection of kids who are at risk of leaving school without a diploma is about 25%, which is about 24,000 students. Obviously, as a ministry and as an education sector we're really concerned about supporting those kids as much as we can to get their diploma, which is why we've put in place the number of initiatives that I outlined in my speech.

The question of whether the standards in the curriculum are right, which is implied in your question, "Do we have the curriculum standards right?" is the question we're now undertaking, in particular with the math review, which is where we've had the most credit loss, according to the Queen's study.

**Ms Broten:** Does the ministry have its own figures as to the number of at-risk students?

**Ms Herbert:** Sorry?

**Ms Broten:** Do you have your own figures as to the number of students you believe would be defined as at-risk students?

**Ms Herbert:** In secondary school, we accept the Queen's study that we have as many as 25%, or 24,000. That's the figure we've been using as an at-risk figure.

**Ms Judith Wright:** I'm Judith Wright, assistant deputy minister for the elementary and secondary programs division. In terms of students at risk, we have the Queen's report that the deputy mentioned, which has a number of estimates. We also have put in place, as the deputy mentioned in her speech, a capacity at school boards by putting at-risk leaders in place. The school boards, through that position, have been better positioned to identify the students who are at risk in terms of not appropriately meeting the grade level.

The second way of identifying at-risk students is through the monitoring of the Education Quality and Accountability Office standardized testing in grades 3 and 6. Through those results, teachers in schools can identify students who are performing at level 1 or level 2 and can put in place the necessary supports for those students as early as possible.

**Ms Broten:** There were funds allocated in March 2003, \$50 million, with respect to at-risk students. Did that money get spent or has that money waited for the recommendations that came out in October for the expenditure of those funds? It was announced in March 2003.

**Ms Wright:** The \$50 million has been allocated to the school boards and they have the money. Ten million of that was to enable them to enhance their leadership capacity at the board level by hiring the at-risk leaders, and \$40 million was allocated to the boards in order for them to develop work plans for addressing their board's specific needs for students at risk.

In return for the allocation, they have done board work plans on how they intend to, first and foremost, focus on the literacy requirements, and then second, look at pathways for students who are at risk.

**Ms Broten:** When did that money flow?

**Ms Rankin:** It flowed as part of the school board operating grants for this fiscal year.

**Ms Broten:** So it's part of the \$112 million?

**Ms Herbert:** It's in addition to that.

**Mrs Julia Munro (York North):** Thank you for coming here today. I want to follow up on a couple of issues that have been raised. In the materials that we received—I'm sorry, I just can't find it quickly—there was some reference made to the whole issue around social promotion. I know that social promotion had, for many years, been a very significant feature of decision-making at the elementary level. I wondered if you could bring us up to date on that issue.

1110

**Ms Wright:** This is a very significant issue, as you are aware. It's also one that's actually quite difficult to quantify in a meaningful way. As you're probably aware, under the Education Act the issue of promotion of a student is a principal's decision. I think one of the aspects that we are certainly going to do in terms of following up on the Provincial Auditor's report is to do some more quantitative research as to the extent of this problem and the extent of the question of social promotion and what's happening across the elementary and secondary school system with that. So we've committed to actually getting a better handle on what I would say is pretty much a systemic concern and one that is probably most important for the individual student and at the school level. We need to be able to have a better understanding of the implications for the students and the school of this particular concern. We will do further research and we will certainly be talking more extensively to principals. I think we'll be reporting back to the auditor as part of our report back on what we find there.

**Mrs Munro:** I appreciate that. I guess my question then, following from the information you've provided is to ask, when you've done the research on the extent of the problem, what are you going to do then?

**Ms Herbert:** I think I would add that what we know now is that there's conflicting research. We've had research in the 1970s and 1980s that pointed out that holding children back, if you like, which is what the system would call it, is detrimental to their self-esteem and their growth. There has been research that says that's not true; there are other ways to intervene with students which will support them to move forward in a way that still meets the criteria. What we have to do before we can tell you what our recommendation to the government might be, will be to tease through all of that information and all of that research and come to some set of conclusions that we might bring forward for the government to advise, but I can't, in advance, tell you what that might be.

**Mrs Munro:** I appreciate that. My next question relates to the question of the students at risk. How do you define a student at risk? When do you decide that a student is at risk?

**Ms Herbert:** The way we've been using "student-at-risk" for the purposes of the government's initiatives has

been to see the students who are at risk of not graduating with a diploma. That definition has really focused on the secondary school system, though we have initiatives for grades 7 and 8 as well because as we come to the grade 10 test we need to do as much preparation as we can. So we've defined it as students who are at risk, through credit accumulation information and through their writing on the test, the OSSLT, of not obtaining their diploma. There are other definitions, clearly, that could be used, but for this specific initiative that has been our definition.

**Ms Wright:** The working group on at-risk students actually developed a definition which was based on the definition that the deputy has given you and also did include as well students who had become disengaged from secondary school for a variety of reasons which would be reflected in their credit accumulation, but also could be reflected in other issues. The actual at-work group has developed that definition. That definition was then used by the expert panel on literacy and the working group on pathways in order to develop the recommendations that they made on what kinds of strategies they felt would work for schools and school boards in addressing the broad range of these students who were at risk of not graduating.

**Mrs Munro:** I wonder then, when you're looking at the issue around social promotion and the kind of problems that it creates, would that study allow you to look at whether or not potentially students who have been promoted socially ultimately become candidates for a student-at-risk program?

**Ms Herbert:** It's hard to say. That's a very good point. You're quite right; it should allow us to do that.

**Mrs Munro:** I think that's a really important opportunity when you're doing research.

The other question I have is related to the question raised earlier by your remarks with regard to teacher training. I think that, in a way that is totally justifiable, obviously a great deal of attention has been focused on looking at teacher training. I'm just wondering, because popularly there is the notion that there are so many factors involved in student results and obviously the work done by the group examining students at risk would be in a better position to comment on the wide number of problems that ultimately lead to a student being at risk. Do you have any data that would demonstrate a correlation between the level of teacher training and student results? Are we getting a bang for the buck?

**Ms Herbert:** Sorry, we're conferring on a response here. We as a jurisdiction don't have data. We have some research from other jurisdictions that would speak to the investment in instructional strategies that work with particular kinds of students and with particular kinds of curricula. I might ask Kit just to comment further on that.

**Ms Rankin:** Yes, we're working very closely with the students-at-risk leaders across the province. One of the things they're being asked to do as they implement recommendations provided by the expert panel on literacy and the pathways working group is to collect data for

a wide variety of purposes. In addition to collecting the data to help them identify and monitor and track struggling students, we're also talking with them about how they can try to use the data they collect to assess the effectiveness of the interventions they make, including the teacher training, which is certainly a major intervention.

We're in the early stages of dialogue with them. The recommendations of the expert panel on literacy did focus on the importance of using information well to assess the effectiveness of our interventions and to work with our students. We're looking forward to doing some more work with them on it. It's certainly a part of the intended direction for the at-risk initiative.

**Ms Wright:** If I could just add, under the early reading-early math initiative, which is focused on JK to grade 6, we are doing an evaluation of that initiative, and part of what we will be evaluating is to see if the investment in the training for teachers has actually ended up in any kind of change in instruction. We can't directly necessarily say that that has in turn led to better performance on EQAO results. The direct causal part is more difficult to make. But we will be able to know whether in fact that training has affected instruction.

**Mrs Munro:** I just think it would be very important to look at.

**Ms Wright:** Very important, absolutely.

**Mrs Munro:** I want to go back for a moment to the whole issue of the student at risk. When you defined it, you talked about the potential that an individual might have for success and the lack of that being the key to defining this individual as at risk. Does it include, or to what degree does it include, those students who are also identified and funded through special education?

**Ms Wright:** "Students at risk" is a definition that would include a kid who was struggling for a number of reasons. There may be children involved in that category who have a learning disability. I think the notion we have is to actually do a fairly tough definition on what a student at risk is and an intervention that is targeted at what the local needs of the school and the school board are. So the actual definition of a student at risk may include some students who are struggling for reasons of having an exceptionality. The actual funding itself is targeted for a series of programs that would be put in place for students who may need additional remediation or a different pathway through school.

**Mrs Munro:** I guess my point is that, although not to take away, and by no means to interpret this as in any way taking away from the value of the identification for special ed and the consequential funding, it just seems to me that in very many cases the student at risk who doesn't fall into that category has been overlooked, and it would seem to me that it's most important that when you are looking at program development, it has to be in a manner that meets the needs of those who fall outside that definition.

**Ms Wright:** And in a way that links all of those different supports. I agree.

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**Mrs Munro:** Yes. Just finally—I'm actually coming to my final question—in the King report—I don't know whether you have it right there, but my copy has page ii. It talks about the new curricula. One of the things it raises as an issue is the question of what are referred to as grade 10 essential skills. It says that since they "do not qualify as required course credits, the transition to grades 11 and 12 workplace preparation courses for students who take the grade 10 essential skills courses is adversely affected." Could you explain to us why that decision was made?

**Mr Grant Clarke:** I'm Grant Clarke and I'm the director of the secondary school policy and programs branch. What the report is referring to is locally developed optional courses in grade 10. The point the report is making is that students don't take them because they want compulsory credits in grades 9 and 10 and so too few, he concludes, have taken advantage of the grade 10 courses that are available to them in English, math, science or actually any other subject as well.

The reason for the courses in the beginning, when the reorganized program was put into place, was to allow students to have catch-up courses, recognizing that some students would be coming into grade 9 and, in key areas like English, math and science, might not be at grade level to meet the expectations in the grade 9 applied or academic curriculum. So the purpose was to give them a leg up, if you will, into the grade 9 program, to allow them to consolidate the learning they needed in the foundational knowledge and skills related to English, math and science and then move on from there, either into the applied stream in grade 9 or 10 and move on to grade 11 courses, or to go into grade 10 and what we might colloquially call stepping stone courses—locally developed optional credit courses in, for example, English, math and science—to further consolidate their knowledge and skill base in order to get ready to take advantage of destination-related courses in grades 11 and 12.

The fact that they're there is not in dispute. The report is saying that unless they come with compulsory credit, too few students will take advantage of them. So this is an issue that is currently being discussed within the ministry. It was certainly one of the recommendations of this report and of previous reports—for example, Barry O'Connor's working group on at-risk students—to increase the designation of these courses to increase the number that would count for compulsory credit.

**Mrs Munro:** In looking at those courses and the lack of take-up on them, would there have been any data done to look at whether those students—are these the socially promoted students that find themselves now in a situation where they don't have the skills that they perhaps should have had in order to be able to go into grade 9?

**Mr Clarke:** It's possible. The report does conclude that students taking locally developed compulsory credit courses in grade 9 are the most seriously at risk of not being able to complete the other course and credit or diploma requirements. So that does suggest that they

were under-prepared coming into grade 9; that is to say, they weren't at grade level. In reality, the grade 9 locally developed courses are based on elementary level expectations. They are indeed catch-up courses, so that does imply that students who need those courses are not yet ready for the curriculum in high school, and this is an attempt to catch them up.

**Mrs Munro:** Would schools have difficulty being able to timetable these courses in relation to the numbers of students who would be eligible to take them? Are there some practical problems in providing them at the school level?

**Mr Clarke:** Yes, and to what extent they're offered in all the schools is another issue. If you have a small number of students in a school who put up their hands and say, "Those are the courses I want," then there are sometimes difficulties in putting together a viable class in a school. Then you run into the issue of students not wanting to leave their school to perhaps go to another school, if that's indeed possible, to collect into a viable class size to offer those sorts of courses.

Also, in the first year of the grade 9 cohort, in 1999-2000, only about 1% of students were in these courses. That grew in the second year to about 5% to 6% in English, math and science. But students are not put into these courses; they have to select these courses with their parents in grade 8. So they have to have enough information about them and understand their value and purpose. One of the conclusions in the double-cohort study has been that students are often in courses that seem out of touch with where they are academically. That's a larger-context piece. Even with the best supports that could perhaps provide the level of support that students might need, whether or not students are actually finding their way into these courses is—

**Mrs Munro:** Would you anticipate that, with the students-at-risk program and the funding, there would be a greater understanding of the opportunities these courses present?

**Mr Clarke:** Absolutely. I think that with the work that's happening at the board level and with the advisory committees that are in place around the students-at-risk issue, there's much more attention being paid to, for example, the organization of the path of the program for students beginning in grade 9; the reach back, the communication between elementary and secondary schools, around what students may need, the information parents and students need in grades 7 and 8 to know what the menu of opportunities is for them in grade 9 and better advice and better information about how, if you do these things in grade 9, there's something waiting for you in grade 10; and more focus on success and trying to overcome the documented experience of failure that many of these students have had in grades 9 and 10.

**Mrs Munro:** Thank you very much.

**The Chair:** Ms Munro, I didn't realize your last question had five parts to it.

**Mr Marchese:** My questions don't have parts; they just flow in a helter-skelter sort of way.

**The Chair:** I'm not holding you to that. Ms Munro said this was her last question, and I just didn't realize there were five parts to it, that's all.

**Mr Marchese:** I'm just going to ask some questions on the basis of how they appeared in the auditor's report. One of the first questions that comes to mind is regarding the latitude the boards used to have to be able to develop some curriculum that addressed the needs of certain students. They don't have as much latitude any more, but some still do in some cases? Does one of you, all three of you, agree with the idea the board should have some latitude to respond to their own particular needs, or do you think we should be centralizing all curriculum?

**Ms Rankin:** I'll reply to that, if I may, Mr Marchese. The locally developed courses are an option that is open to school boards. There is actually a guideline for school boards in the development, and there's a process for approval of those courses to make sure that even though they're locally developed they are consistent with the overall vision of the Ontario curriculum and will meet the needs of students well. As you've already been discussing with the committee, there can be locally developed courses that are substituted for the compulsory courses in grades 9 or 10 English, mathematics and science. In addition to that, boards have the opportunity to propose locally developed courses for other areas that they think would benefit their students. A number of boards have developed such courses for a wide range of needs; some of them for struggling students and others for other purposes, for preparing students for future career directions.

The point about the three locally developed courses that are compulsories is that those are the ones they can do instead of the Ontario curriculum, whereas the others would be in addition.

**Mr Marchese:** So we do know how many boards are doing their own locally developed programs, because they have to get your approval, right?

**Ms Rankin:** There's a process working through our district offices to gather that information annually.

**Mr Marchese:** There's a process, but we don't really have an established process at the moment, is that it?

**Ms Rankin:** We do have an established process, and each year there is a careful review of all of the locally developed courses that school boards are proposing. Those are either approved or there's a dialogue with the school board about—

**Mr Marchese:** Are they approved in advance of those courses being offered?

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**Ms Rankin:** Yes, that's the requirement.

**Mr Marchese:** Then you would review them on the basis of their effectiveness, presumably, on a three-year cycle or whatever?

**Ms Rankin:** There is a three-year cycle of review for the optional courses. The board is required to make sure that the courses are meeting the needs of their students and then periodically to resubmit on that basis.

**Mr Marchese:** There's a cost, obviously, when boards do that. Do the boards cover that on their own?

**Ms Rankin:** The development of the locally developed course would be the responsibility of the school board. Whether that's an extra cost to them or not would depend on how it's done. In terms of the ministry, the ministry staff would come together and do a review process, and that does occasion some small extra cost.

**Mr Marchese:** But there is an extra cost for the board. Do they just find it somehow? How do they find the money if they think there's an important course development that they have to do for grades 9, 10, possibly 11? Do they just find it?

**Ms Rankin:** With the original development of the locally developed courses in English, math and science for grades 9 and 10 back in 1999 and 2000, where it was expressed to the ministry that this was a provincial need, the ministry actually supported a consortium of school boards to co-operatively develop and then provide them to all school boards in Ontario. Otherwise, if there are individual courses that boards want, they would determine what resources were needed to do so. It might be time as opposed to additional dollars, but still it would be one or the other.

**Mr Marchese:** Time is always money. Someone has to do it. The other question that had arisen was around the issue of curriculum and its implementation—you spoke to it briefly, I think—where people talked about the curriculum being introduced in haste, perhaps not having adequate text books at the time, and teachers expressing a concern around students at risk. You only came four years ago, so obviously this was done before your time. The other two of you, were you around? You weren't. So you really can't comment on that, can you? That's a problem, isn't it? I was going to ask—presumably you folks in charge would know that teachers would be complaining that perhaps this is done in haste, not adequately prepared. Training might have come at some point, but in the meantime they might have been inadequately prepared; in fact, curriculum might have been introduced and the textbooks not been available, which is odd but probably true. Did some of you hear about that while that was going on? You must have been around somewhere? Do you have an opinion on that?

**Ms Herbert:** I was around somewhere, yes. I have been a civil servant for a long time, Mr Marchese. I had three children in the public education system, too.

**Mr Marchese:** That helps.

**Ms Herbert:** What I can speak to on this is, of course, feedback that we've had from the curriculum implementation partnership group, which is a group representing all of the stakeholders, including the Ontario Teachers' Federation, faculties of education, school board representatives, that have worked together on implementing the curriculum. As you can expect, that partnership is the group that actually brings its issues to the table. I can speak to some of the issues you talked about from the perspective they've given me, which is that the elementary implementation, if you were in a classroom, felt hasty. There was a lag time between some of the support documents that teachers required and the implementation

of the curriculum that left teachers in the classroom, as the teachers' federations would express it, feeling not well-supported as they implemented the curriculum. I think the ministry tried as much as possible to look at methodologies which would provide at least interim supports and resources to teachers. You will recall the Xeroxing of textbooks was one of the things I think parents and teachers commented on.

**Mr Marchese:** Did we admit to that at the ministry, that that was happening?

**Ms Herbert:** In the ministry—and we say this now—if we were thinking about elementary reform, would we have wanted to have more time or wanted to start with the support documents first? We probably would have. The problem is that when you are doing a reform of this size and this magnitude, while you are actually not able to stop the system and hold it still while you do the reform, it's a very complex and massive undertaking. In spite of all of those glitches, I think, as the auditor has said in his report, the actual development of the curriculum and its use now in the schools is recognized and welcomed by teachers.

**Mr Marchese:** For sure. I was worried about the curriculum casualties that Mr Kennedy spoke about. It was terminology he used during the hearings where we questioned you and the minister before. My concern is around those curriculum casualties, and presumably we would have known that not only the haste but the rigour of the new curriculum would hurt a lot of the students, particularly those who would be studying at the basic level at the time.

Would the three of you have put in place something that would have protected those kids? My sense is that you would know this would cause problems and that you would have probably put something in place to help them, wouldn't you?

**Ms Herbert:** It's a speculative question. I'm sure the auditor would not encourage me to reply to speculative questions on an audit report. But I think, as we talked earlier about the students-at-risk initiative and the supports the ministry is putting in place now, that's a response to students who were concerned about their ability to gain their diploma.

**Mr Marchese:** I hear you. Thank God it's coming.

**Ms Herbert:** What we've done lately in looking at curriculum revision and making sure that the curriculum is up to date is to look at a cyclical review, so that we are always reforming the curriculum in an orderly fashion. I can ask Kit to talk to that in more detail.

**Mr Marchese:** No, that's OK. I'm just anticipating your answer possibly. I don't know. It's OK. It just worries me that when we introduce new curriculum, there wouldn't be some planning or some thought about how we would be hurting a whole lot of students in the system, and I'm worried that we don't have those things in place. In the meantime, a whole lot of students get hurt.

My particular interest is students at risk. Unless we serve those students, I'm not quite sure what we're doing,

except that you want to teach everyone, naturally, and everybody should have the environment to be able to achieve at whatever levels students can. Students at risk have the most to lose in terms of life choices and their own life development.

I remember reading studies many years ago and one particular study where teachers were able to determine, they said, who would go to university, who would go to college and who would go to work by grade 1. I think if you talked to a lot of teachers in grade 1, they probably might agree with that assessment. That was part of the study they did. We know literally by grade 1—

*Interjection.*

**Mr Marchese:** Oh, no, you're quite right. That would be bad for kids, wouldn't it?

Teachers were able to predetermine literally, at least based on the skills they bring, who would go where. Knowing that, based on how we put students into reading groups, because we still do that in grades 1, 2 and 3, we have a sense of who's in trouble and who's experiencing difficulty. What does the ministry do—I'm assuming you have the same knowledge as I or others do—or suggest by way of how we deal with those students that we get into our system in JK and SK, where they offer that, and obviously in grade 1, things we can do or should be doing that we're not doing to deal with students we know will be at risk in grade 9, grade 10 and so on?

**Ms Herbert:** We know, as a society, that children coming into school ready to learn is a key factor in future development, and now we know, through the grade 3 assessment of reading and writing and math, where students are in terms of their performance against a province-wide assessment. That is an intervention point that becomes really important in the education system, looking at the results of that assessment and looking at remediation strategies and interventions which support those children who may be at level 1 in the results.

However, we don't want to wait until grade 3, and so we need to move backwards to JK and SK. I'll ask Judith to talk a little bit about our early math and early reading initiative.

**Mr Marchese:** I did see their recommendation. They did refer to it. We're happy that such things exist. I was going to ask a separate question on that. But if you want to touch on that, and then I'll ask it again, sure.

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**Ms Wright:** I do think the early reading and early math strategy is an attempt on the part of everyone involved in education to begin to address the very important question that you've raised. The early reading and early math report started out with two expert panels, one in reading and one in math. We had front-line teachers, principals, SOs and academics basically coming together and making a report on what they thought were their best recommendations for the most appropriate approach to teaching reading and then math in the early years and, as part of that, what the important step was in identifying kids who were, even at that age, struggling to learn for a variety of reasons.

Those two reports were then distributed widely to school boards, SOs, principals and teachers. We had a series of sessions with board teams that were brought together, often with the members of these expert panels, to talk about what the meaning of these reports was. That was an attempt to begin that discussion on what sort of requirements there were for teachers in JK to grade 3 in terms of what they needed to teach reading, math and writing.

We have subsequently followed that up with quite extensive training. By the end of this year, we will have a lead math teacher and a lead literacy teacher in every elementary school who can work within their school with other teachers to talk about what's in the early reading and early math reports and to talk about what the needs of their schools are for teaching.

We have supplemented that with what we're about to release, which will be an electronic Web-based site for teachers to go on to pose their problems and ask for the assistance they need, as well as a guide for parents on reading and math.

So that's the first phase of what we assume will be quite an ongoing phase to address this issue.

**Mr Marchese:** So let me ask you this: This early reading strategy is only happening strategically in, what, 40 schools?

**Ms Wright:** No, it's in every elementary school.

**Mr Marchese:** The early reading strategy is happening everywhere?

**Ms Wright:** At the end of this year, every elementary school will have been trained on the expert panels' recommendations for what's needed to teach reading and math and writing, and every elementary school will have a lead teacher identified in each one of those to work with the elementary teachers in a community-of-learning approach.

**Mr Marchese:** So the lead teacher recommends strategies and so on to the other teachers and we hope for the best? There's a Web site, people can—

**Ms Wright:** The actual report of the two expert panels lays out in quite a bit of detail the sector's own professional judgment on what they think is an appropriate approach to teaching reading and math. The role of the teacher is to develop a community of learning within their school to talk about what kinds of problems they have, what kids need, how to make a strategy specific to their kids.

**Mr Marchese:** Can I ask you, has this been done in other jurisdictions?

**Ms Wright:** A version of this has been done, yes.

**Mr Marchese:** And do we know how well they have done? Do we know what the weaknesses were? Do we know how to take corrective action on that basis?

**Ms Wright:** We know from other jurisdictions the importance of focusing on the community of learning and teaching around literacy and numeracy, and the evaluation that I referred to earlier when answering Ms Munro's question will be an evaluation that we've started doing of this particular initiative to ascertain how we can

change it, how we can improve it, whether it's had any significant impact.

**Mr Marchese:** In spite of that strategy, I suspect we're going to have what the deputy said we had 10 years or 20 years ago. These are ongoing discussions. You will always have a lot of students who simply won't do well and many of them won't graduate. They didn't graduate 20 years ago, or 30 or 50 years ago, and they might continue to do so in spite of this learning strategy. I'm not sure you have other thoughts about what to do.

There are concerns in the early years that once students get into special ed—just to talk about special ed—there is a worry that people will be stuck in that level in which they find themselves. A number of studies talk about the fear some people have about not being able to jump out of a particular reading group or special education class and so on. There's a concern that maybe we don't have adequate special education resources and, even if we did, there's the fear that once in there, even though they need help, they might not ever get out. What do the three of you say about stuff like that, in terms of how we deal with that?

**Ms Herbert:** I agree that when parents talk about their children, they have a fear of their child being what they would call "labelled" and I think their fear is the pre-judgment that you talked about. I actually believe that teachers believe they can intervene and support children in a way that doesn't leave them labelled or typecast in a particular stream—you used the example of a reading group—that doesn't allow them to obtain their full potential.

Really what we're trying to do in the ministry now is to support the school boards to ensure that the basics, that literacy which we know is absolutely foundational, is taught early and assessed early. If the system can do that—and I believe it can—then we'll have moved a long way to addressing parents' concerns.

**Mr Marchese:** Let's just assume the teachers are doing their best, obviously, once they're in special ed and that, we hope, with all their learning and strategies, some are going to succeed better. Do we have enough special education resources, in your view, to deal with all the problems that we have across Ontario?

**Ms Herbert:** At the present time, the ministry has provided resources according to the annual ISA assessment, so as the ISA assessments are done, the ministry has been providing the resources that match the results of those validation exercises.

**Mr Marchese:** I remember going to Windsor, and the trustees and the director talking about the fact that their problems are so severe there, they don't even have specialized people to deal with the problems that those students are experiencing. My sense is that there's a shortage of expertise around the province and it's more prevalent in some areas than others. Do you think that? Do you feel that? Do you know that? What are we doing about it?

**Ms Herbert:** Two responses. One is that, as I said on the funding side, where students are identified and where

the validation process has taken place, we've been providing the funding. On the question of expertise and supporting children with exceptionalities with instructional interventions that support their individual needs, this is an area, not just for Ontario but across Canada—this is an issue that the Canadian Council of Ministers of Education have been addressing: How do we develop the right expertise to know what kind of interventions work with what children with what exceptionalities?

We've done some preliminary work in the ministry. We hosted last year a very large conference with international experts on autism and educational interventions on autism. We have been doing a lot of research into educational interventions which support particular children with particular exceptionalities. But moving from a system which supports students with special needs in their classrooms in a way that makes them feel safe and supported—an EA—to thinking about what are educational interventions to support that child's learning is the piece that I think—across North America there is a sense that we need to do a lot more research and a lot more standards setting.

**Mr Marchese:** I'm telling you, there's a lot of research out there. I read it 20 years ago. It's there in terms of effective schools. And I do believe, although I have a different view about instructional kinds of education simply being the solution to children's problems—and I want to ask you a separate question on that.

But the effective research that I've done years ago talks about how if you've got a great educational principal—who, by the way, I believe should be a teacher—an instructional teacher who is a head principal who's got good curriculum knowledge, and you've got teachers who are happy to go to work and you've got a strategy to get parents involved, just those three simple things could turn a school around where they are at risk. So there are things that we can, as educators, do that can change that around. We don't need to re-study the studies. They're there.

So I wanted to ask you that question, for a response to the statement I just made. And then another question about how instruction alone cannot deal with many of the problems the children bring to the school system. Surely you, having been around in different ministries, would have an opinion on what else you think children would need, in addition to the instructional and the school environment, to be able to bring a better result for students who are at risk.

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**Ms Herbert:** Maybe we could start with the first part of the question, which is, what is the combination of factors that make a school effective and efficient? Maybe Judith, I'd ask you to talk about it.

**Ms Wright:** Maybe what I can do is talk specifically about the program we have on turnaround schools, which I think you're alluding to—I could be wrong—which is a program we have to work with, at this point, 43 elementary schools chosen partially because they had quite poor results on the EQAO test but also because they reflected

a certain socio-economic location in the community—rural, geographic. We are undertaking an evaluation of that program as well. It's in its third year and we're evaluating the first cohort of schools from this turnaround program.

I think your three points would be identified in that evaluation as being fundamental: parent participation, the absolute importance of the culture of the school and the leadership of the school, not just the principal but also the teachers—

**Mr Marchese:** That usually comes from a good head principal.

**Ms Wright:** Absolutely. All the literature says how important it is for the role of the principal to provide leadership for the teachers and the morale of the school. The actual evaluation does show, however, that in many cases the teachers themselves feel the need for more information on instruction and more information on the specific needs of certain kids, often kids with exceptionalities, like just how to handle certain classroom situations.

So part of what is interesting about the turnaround school is just the fact that, as part of it, we had a group of experts who would work with the schools and the teachers. I think the part that both the principals and the teachers found valuable was having somebody to say, "Have you tried this particular strategy?" That was very useful. So it does reinforce the importance of instruction but within the context of a whole-school approach.

**The Chair:** Mr Marchese, I'm going to go to another member. We'll come back to you.

**Mr Marchese:** We'll come back. There was a second part. Maybe you can handle it another time when I come around.

**Mrs Liz Sandals (Guelph-Wellington):** I'm going to defer, if I may, if I can be on after lunch.

**The Chair:** Yes, sure. That's fine. Mr Fonseca.

**Mr Peter Fonseca (Mississauga East):** Where do the measures that you use right now to be able to do this planning and looking at—let's take into context the at-risk over the last two, four, six years. Where do you get those measures?

**Ms Herbert:** If I might, the measures we've been using have been essentially the results from the EQAO province-wide assessments, so grade 3 reading, writing and math; grade 6 reading, writing and math; grade 9 math; and now of course the results of the OSSLT, so the number of children who are able to pass the literacy test.

**Mr Fonseca:** How long have those measures been going on?

**Ms Herbert:** We started the first grade 3 in 1997.

**Mr Fonseca:** In 1997.

**Ms Herbert:** Yes. It's incremental. They didn't all start in 1997. The OSSLT has really only had its second—but grade 3 started in 1997. So at the elementary level, we have essentially what I would call four years' worth of data.

**Mr Fonseca:** That was coming in yearly.

**Ms Herbert:** Yes, it comes in annually.

**Mr Fonseca:** Was anything done four years ago, or in 1997? Was that when you started?

**Ms Herbert:** I think the EQAO would say that they need about three years of data before you can see any trend or any patterns in the data.

**Mr Fonseca:** So because there was no trend, nothing was done for these at-risk students.

**Ms Herbert:** The at-risk students differ. Just with the recent report, we've had the three years of the Queens study, which has pointed to these children. Of course, they are in the system now so they actually have to—in following these students, there's always a problem with our data. Our ability to have current data is always problematic. We have to see how students do before we can actually measure.

**Mr Fonseca:** I'm just wondering if it's too late. Are we intervening too late? Are we getting to them too late? I know that actually Ms Broten brought up that there was \$50 million that went in. Ten million was to hire at-risk leaders, is that correct? And then the other \$40 million went to the school boards. What was that for?

**Ms Wright:** The \$40 million was actually to enable school boards to develop programs and help for students who are at risk, focusing first of all on literacy skills, because the first concern was to prepare kids adequately on the literacy side and, secondly, to look at a number of initiatives that would perhaps engage kids who would be more likely to leave the system, be that through school-to-work programs or co-op programs or apprenticeship programs.

**Mr Fonseca:** Have they built in the reporting mechanism through that fund?

**Ms Wright:** Yes. When we allocated the money, the school boards were required to do a fairly detailed work plan indicating what they would like to do with that money. We have reviewed that and provided comments back to them based on shared experiences between school boards. At the end of this school year, they'll do a final report indicating how they went about implementing those work plans and what they achieved, and we will be requiring that accountability on an annual basis.

**Mr Fonseca:** My fear is that the reporting is always coming too late and we're losing these at-risk students and they're not getting the help they need. Communities like my own, in Mississauga East, change so often that we're finding they're not getting the help because the reporting is coming so late. We're reading the trend, but they're gone and we're really missing the boat with that.

I also want to ask: In terms of the system, we know that in the educational context for better learning we could talk about class size and nourishment and teaching style and learning tools and motivations—everything that comes in and around—but at-risk students are at risk because of other socio-economic criteria. What's being done there?

**Ms Herbert:** I think we've outlined what we've done around the OSLC, which is a second opportunity for students in a non-tested environment to demonstrate that they have literacy skills. That was the most significant

decision that was taken last year and implemented last September. We have those classes up and running across the system, and they will address those children at immediate risk of being in grade 11 or grade 12 and having failed the test; they will have another opportunity. As Judith has already indicated, there are a lot of supports around remediation, extra help and interventions in the school.

You've raised a really interesting point that we struggle with all the time, around how to support schools and services for students who have needs that are beyond instructional learning; that is, children's mental health issues and issues of engaging children who may not be engaged by the normal academic route that lots of children take. What we've tried to do there is create a number of alternate options for students, to engage them in thinking about the work world. We have co-op programs; we have school-to-work transition programs that we hope offer students a way to engage them to stay in school till they get their diploma but allow them the opportunity to think about work as a legitimate option for them. We have the Ontario youth apprenticeship program, which allows students to stay in school and be students but at the same time earn some time against an apprenticeship. We've really tried to work on that side of the secondary school system as well, as an alternative for students who don't follow the normal engagement on the academic side.

**Mr Fonseca:** I think that's terrific, as far as the students who follow whatever you may deem the norm, the core compulsory courses. Here's what I find really sad right now: We were talking yesterday about innovation, but by having students only stick to those core compulsory courses and drop the drama, drop the music, drop the phys ed and not be able to get involved in those courses, I think we're actually stunting our province in terms of innovation and creativity. When you look at the real workforce, when you get out here, it's about innovation and creativity and planning and leadership and all the things that are learned through these non-core compulsory courses. I think we're setting up a cookie-cutter type of world, and that, in my mind, really doesn't work.

**Ms Herbert:** I might ask Grant to come up and talk a little about the courses I mentioned.

**Mr Fonseca:** Can you let me know if there's been a huge drop in those courses?

**Mr Clarke:** With respect to your first question, schools and school boards have always had responsibility for dealing with students at risk. This is not a new phenomenon. What's new, as the deputy said earlier, is that our way of tracking students has changed somewhat and the curriculum structure has changed somewhat, as have the diploma requirements in the reorganized program.

Right back to the Royal Commission looking at the high failure rates in basic and applied courses, those were students seriously at risk of not getting a diploma. Fundamentally, the reason associated with dropouts reported in that report was that students saw these as dead-end courses not going anywhere, so they basically voted with

their feet. They didn't see any reason to stay in these courses, because they, along with teachers and parents, understood these weren't going to get them where they needed to go.

Boards have had responsibility, as far back as the implementation of the new policy and diploma requirements, for providing remediation within the school day—before or after school—for identifying use of classroom assessments, what is required if a student is falling behind in assignments within a subject in a classroom setting. It is the professional responsibility of teachers to recognize that, and typically they do something about it. So it's really not new.

In terms of the structure that was put in place, this really gets back to a discussion about locally developed compulsory credit courses. I think there was a recognition that there are going to be some students in a higher standards curriculum in high school who are still not going to be ready. These three courses—English, math and science—are there to provide that platform to catch up some of the things student didn't come with when they were getting into grade 9. As was said earlier, you can have the right courses and supports, but a lot of this is determined by the choices that students and parents make and the information they have about, "How will this help me succeed?"

So the progression from 1% of students in the first year taking advantage of these courses compared to the 25% estimate of students who are at risk—if they're at risk in math and only 1%, or even 5% in the second year, are taking these catch-up courses in grade 9, there's a real gap. Why isn't that figure larger? With the board leaders, we're attempting to say, "Is this an organizational problem of schools not being able to really timetable effectively in this way? Is it a communication issue, so that parents of students in grades 7 and 8 actually understand what's ahead of their son or daughter in high school?"

The program pathways group and the board leaders are serious about finding a way to better communicate, not only between elementary and secondary schools but obviously with parents and students to say, "Here's what we recommend that you think about when you're coming into high school. You need to think about it in grade 8, and not just fill out option sheets blindly and take courses or ignore the kind of supports that may help you succeed as opposed to experiencing failure." But a lot of this, as I say, is driven by an understanding on the part of parents particularly, who obviously have the single biggest influence on the selections students make when they're looking at the courses they're going to take. So we have a lot more work to do with the board leaders to make that real.

**The Chair:** We'll reconvene at 1 o'clock.

*The committee recessed from 1204 to 1306.*

**The Chair:** The deputy has been kind enough to bring some of the documents that we were talking about this morning. Maybe you would like to see what those documents are, if members want to wander over and have a look at them. I don't know if there's a desire for us to

retain them or not. If any members want one of those documents, I'm sure they can have one. I appreciate that very much, Deputy.

**Mr Richard Patten (Ottawa Centre):** It's a fundraiser for the minister.

**The Chair:** Oh, we have to pay for them, is that it? To the parliamentary assistant?

Mrs Sandals, how long are you going to be, in your questioning? Do you have any idea?

**Mrs Sandals:** I could go for an hour and a half.

**The Chair:** Then I'll call on Mr Flaherty next.

**Mr Bill Mauro (Thunder Bay-Atikokan):** Chair, will we first make a decision around tomorrow's meeting? I thought we were going to do that right after lunch.

**The Chair:** I was talking to Ms Broten. I was waiting for her to return.

**Mr Mauro:** Do we know when she is returning?

**Mrs Sandals:** She may have had a conference call.

**Mr David Zimmer (Willowdale):** She does have a conference call and she's going to be tied up for some time.

**The Chair:** I don't care when we deal with it. Was there any objection—

**Mr Mauro:** It matters to me, because I might have to change my flight.

**The Chair:** As far as I'm concerned, if it's a great inconvenience for Mr Andersen to be here, I have no objection to doing this on March 22 or thereafter at a regular meeting. It will probably be a two-hour meeting. I don't see why we wouldn't accommodate him at this point in time. He's new to his post. That's my position: We would cancel tomorrow.

**Mr Mauro:** Do we have the authority as a committee to make that decision to change the dates?

**The Chair:** Yes.

**Mr Mauro:** You don't need approval from anybody?

**The Chair:** No.

**Mr Mauro:** I'd prefer to do it tomorrow. I don't know how we're going to make this decision. Does it come to a vote of the committee members, or how do we decide to do this? Do we leave it to the whips?

**The Chair:** I don't understand—

**Mr Zimmer:** Can we do this? I'll take a couple of minutes and go upstairs—

**The Chair:** OK. Let's go ahead with Mr Flaherty—

**Mr Zimmer:** And I'll come back with the answer.

**The Chair:** You have six members on the committee. You're going to decide, so just tell us which way it is. As far as I'm concerned, we can postpone it. There's lots of work for our researchers to do between now and March 22, so we're not really postponing any report-writing anyway if we do postpone the meeting with Colin Andersen, the deputy of finance.

Mr Flaherty.

**Mr Jim Flaherty (Whitby-Ajax):** Thank you for being here today, Deputy and ADMs. There's a lot of material here. I'll try to be as concise as I can be with the amount of work that the auditor has reviewed.

One of the concerns I have listening this morning is that I've heard a lot about the ministry, school boards, research and studies; I haven't heard much about parents. I think I've heard parents mentioned twice, and I was paying attention this morning. I think they have a little bit to do with their children's education. Perhaps they ought to have the most to do with their children's education.

The other thing I'm not hearing is a sense of urgency. When I look at these test results comparing our students with students around the world, there should be a sense of urgency to this, and a timetable, it seems to me. I will look at some of the test results and we can talk about that. I put this in context—I know the uniform curriculum is new. I was part of the development of that; I remember it well. And I know that the testing, as you said earlier, Deputy, has only about four years or three years of history. So there are some recent developments there that have to be taken into consideration.

The only thing that I'd say in a preliminary way is that I know there's talk about resources, which usually means money, but when I look at the accounts of the province, the Economic Outlook and Fiscal Review, I'm heartened to see that the Ministry of Finance, on page 31, wrote: "This has led to a shift in the way that governments operate: increasingly, the focus is on the results of spending. This shift recognizes that it is not just how much that is spent that matters. It is equally important to measure what the spending has achieved for a society as a whole, in terms of key outcomes such as literacy and numeracy rates."

I'm sure you agree with that, that more dollars don't necessarily result in better outcomes. It's not just about the money. When I look at education spending itself, as set out on page 36 of the document, education spending is anticipated—we have 9.6% this year, from \$9.236 billion to \$10.127 billion. It's \$891 million in additional education spending in one year. I hope we are not emphasizing money here, because if it was just money, it seems to me that the results would be much better. We have the results as reviewed by the auditor.

I want to talk about a few of those things, starting off with the promotion practices, and I am looking at the auditor's report. Sorry, I'm actually looking at the memo that was done by legislative counsel. This is what Mrs Munro mentioned earlier about social promotion. The message we have here is that "In its 2001-02 business plan, the ministry stated its intention to require that only those students who achieved an acceptable level be promoted. No such action has been taken." Has there been any action taken on that proposed policy by the ministry of education on social promotion?

**Ms Herbert:** No, Mr Flaherty, there hasn't been.

**Mr Flaherty:** Is there going to be?

**Ms Herbert:** It is our hope that, as part of working on the students-at-risk initiative, we'll be examining—as we said when we talked with Mrs Munro—what the research and inter-jurisdictional practice has been around social promotion and what current practice is now.

**Mr Flaherty:** All right, so that's up in the air. That may or may not happen.

**Ms Herbert:** It's our intent to undertake that. What the government will do with the results of that work I can't at this point in time speculate.

**Mr Flaherty:** In the auditor's report, at page 131, the auditor comments on various issues, test results and the students not doing that well, particularly in the applied courses. This is referencing the EQAO grade 9 math test results: "Educators variously attributed the lack of success of these student to a curriculum that is too hard, poor work habits and low motivation, and ineffectual instructional techniques. The primary concern regarding poor work habits was the failure to complete assignments."

Then, "A study performed at one board, in connection with a doctoral thesis, also with respect to mathematics, found that secondary school teachers felt that social promotion in elementary school resulted in the affected students not having 'the [necessary] background in math' or the motivation to do the work required to succeed." Is there some research or science to the contrary?

**Ms Rankin:** I think we can talk about the work that has been done in response to some of this concern and information that came forth about students' achievement in mathematics. We consulted with school boards to ask where they thought issues were that needed to be resolved, and one thing that we have undertaken is a really targeted approach to giving teachers new ideas, new strategies, right down to sample lesson plans, for teaching grades 7 and 8 mathematics and grade 9 mathematics—a lot more detailed kind of help than we have provided in the past.

The course profiles which were given and the elementary units of study didn't take it down to quite such a fine research level. The work was research-based and it led to the production of a document called math TIPS and a very targeted kind of training program to help teachers in school boards to address these issues. We held a meeting in Toronto in December where we brought teams together from every school board in the province, and we've provided funding to school boards, along with this math TIPS resource, feeling that if we give them some very targeted strategies and well-researched ways of working, this should be a real support to teachers and should help to improve student achievement.

**Mr Flaherty:** I'm worried about support to parents. Isn't it misleading to socially promote students, like a young person who's failed grade 5 math, and promote them to grade 6 and to grade 7 and to grade 8, and then have them perform very badly on the EQAO grade 9 math test results, naturally enough, since they didn't even get grade 5 or grade 6 math? Isn't that misleading to parents?

**Ms Rankin:** What we have done in recent years to try and help parents and to help teachers and principals around promotion issues is to articulate more clearly than ever was articulated in the past what success looked like. So the curriculum policies described what expected student achievement was looked for in each grade and in

each subject, and then exemplars were developed to show parents and teachers what student achievement looked like at the various levels of success—levels 1 through 4, which correspond from a D through an A. So for the first time, parents can actually see samples of student work at these various levels of achievement and ask teachers and principals very good questions about their own children's work. So there is a better understanding of the standard than in the past.

**Mr Flaherty:** I appreciate that and I do like the new report cards, and lots of parents like them. I hear about them and the new curriculum, which everyone seems to like, or generally like. What concerns me, though, is the reliance, if there is, on parents to figure out whether Johnny has passed grade 5 math or not. Is it the ministry's point of view that it's up to the local principal whether or not to promote Johnny?

**Ms Rankin:** The Education Act places the responsibility for promotion at the door of the principal, in consultation with parents and with teachers, and that practice is very much in place in my own knowledge in terms of the consultation about promotion where there is something in doubt about it, and again, more information than in the past about what is expected for promotion to occur—that is, the standard that's expected to be met for promotion.

But then, as you say, Mr Flaherty, the principal makes the decision. That's why one of the proposed responses, one of the things we've undertaken, is to do the research to look at this whole issue of promotion, not only from an Ontario perspective but from a national and international perspective. When we have done the research and collected the best information available, we certainly hope to be working very closely with principals to provide them with the information they need to exercise their responsibility in the best possible manner.

**Mr Flaherty:** I'm not an educator, obviously, but what concerns me is we have this province-wide testing—for example, the grade 9 math testing—and then we're comparing our students internationally as well with some of the other test results here. But then on a school-by-school basis principals are making, in the earlier grades when, arguably, remediation could be most effective, decisions that are, I imagine, inconsistent across the province of Ontario. So it depends on which school your child happens to attend whether there is social promotion or not.

**Ms Rankin:** It has certainly been a goal of the work that we've been doing in our branch and working with school boards in co-operative ventures to give them resources like the ones we've mentioned in our response to help them achieve consistency across their schools and lead to consistency across the province. Consistency doesn't happen overnight, and we're working in that direction.

**Mr Flaherty:** I'll leave this subject other than to ask you, what is the timeline on the research that you're undertaking on the social promotion issue?

**Ms Rankin:** We expect to have completed the research within this calendar year, and we will then know

what the best practices look like, what the proven results are of other jurisdictions.

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**Mr Flaherty:** Changing from that to the remediation issue, has the ministry looked at the possibility, raised in the auditor's report, of using the Chicago example of mandatory summer school for students who are not succeeding in a particular subject?

**Ms Rankin:** As we do the research on social promotion that we've just referred to, looking at examples like Chicago and other jurisdictions that have mandated remediation would certainly be one of the things we'd cover.

**Mr Flaherty:** Do you agree with me that that actually goes with the social promotion issue? Students could be offered an opportunity by a principal to improve their mark in a course by mandatory summer school, or the alternative would be repeating the course.

**Ms Rankin:** It's certainly not unconnected. I think there are a number of ways we can hope to improve student achievement, and additional remediation outside the regular school day or school year could be one of them.

**Mr Flaherty:** There is a lot of talk, of course, about the training that's necessary—I ask this in the context of the announcement made recently by the Minister of Education about the professional learning program and the training that goes on there. I understand that 15% to 20% of our teachers in Ontario do not upgrade. Is that right?

**Ms Wright:** I'm not familiar with that figure. I'd have to know where you got it.

**Mr Flaherty:** The Ontario College of Teachers.

**Ms Wright:** And I'd have to understand better where they got it. It depends on whether that was the percentage of teachers who had actually registered their professional learning credits. Sorry, I'm just—

**Mr Flaherty:** Actually, only about 26,000 reported that they took the courses. They ignored that, because there was a union thing going on there: not reporting and all that.

Leaving that aside, the actual estimate—I don't think it's unique to Ontario that unless one has an obligation to upgrade, using that term broadly, some folks don't do it. The majority of folks do, 80% or so, which is great, but my question is: If we're concerned about teachers being adequately trained to remediate and help at-risk children in particular, how does that square with not obliging all teachers to keep their training skills updated?

**Ms Wright:** I'll give an example of what we've been doing in working with teachers so they are feeling very comfortable in teaching around remediation on literacy. We've put out a booklet called Think Literacy, which Kit can actually talk about in more detail, to work with secondary school teachers on how to integrate the teaching of literacy across all curricular subjects. Our experience with the release of that resource has been that teachers have received it very positively. They're very eager to use it and be trained on it, and I think their

perception is that this is a skill set they need to do their jobs. That's a concrete example of where we've provided training. I can go on, in addition, around the early reading one, where the take-up has been very high.

**Mr Flaherty:** On the training issue, are teachers teaching phonics to some students so they can learn to read?

**Ms Wright:** The early reading expert panel identified a number—a range, if I can put it that way—of teaching strategies, of which phonics was one, that they felt were appropriate for a teacher to consider under certain circumstances. So the simple answer to your question is yes, and it's been included in a range of strategies that teachers in the early grades could look at.

**Mr Flaherty:** Looking at it from a parent's point of view, can parents be assured that in all schools in Ontario, their child can learn to read phonetically if they're unable to learn to read in the whole-language process?

**Ms Wright:** I'll ask Kit to address that.

**Ms Rankin:** The elementary curriculum specifically does refer to the importance of including phonics within the learning of language skills in the early years for children. So I would anticipate that our teachers are implementing those expectations as part of their teaching of the language curriculum.

**Mr Flaherty:** The ministry doesn't know that, though, because you don't check up on those things.

**Ms Herbert:** It's true; we do not inspect schools.

**Mr Flaherty:** About the literacy test in grade 9, the OSSLT—it's great to have another acronym. The test results—the next one is the math test—and I'm reading from the auditor's report on page 130:

"The results on the 2002 Ontario secondary school literacy test ... and the grade 9 math test confirm that many students have not acquired sufficient literacy and math skills. The OSSLT is designed to test only basic literacy skills, not students' comprehension of the secondary school curriculum. Yet 28% of first-time and 52% of previously eligible writers were unable to pass this basic skills test after nine and 10 years of schooling respectively."

Do you agree with the auditor's report that this is not a comprehension of the secondary school's curriculum test?

**Ms Herbert:** Our understanding from the EQAO—you know this is their test, not the ministry's test—is that it is a literacy test based on expectations that would be reasonable out of the curriculum, but that it is a basic literacy test. Kit, I don't know if you want to clarify my layman's language on this.

**Ms Rankin:** The EQAO has indicated that the way they determined what sorts of things to put on the grade 10 literacy test was by looking at the expectations in the curriculum up to the end of grade 9, especially where they involved communication skills. That's where they developed their sense of what the baseline should be.

**Mr Flaherty:** What is the target for improvement, and over what period of time, on these scores, which have to be a matter of great concern to many parents?

**Ms Herbert:** The ministry hasn't set a target. Our expectation is that all kids will pass this, and that's the work we're doing with the system. When we talk about students at risk, all those students should have a fair opportunity, with all the supports in place, to pass this test. So when you say "goal," our goal—and I know it may sound like motherhood—is that all kids get their diploma out of grade 12.

**Mr Flaherty:** That all students in Ontario will pass the OSSLT? That's a laudable goal. When?

**Ms Herbert:** That's why we're working with the system now to see what the right interventions are. It's why we're doing the early literacy and early math initiatives at JK, SK and the primary grades and why we're working with this particular cohort of students in grades 11 and 12.

**Mr Flaherty:** Do you have any timeline on this? Are we looking at two years or three years or 10 years for improvement?

**Ms Wright:** I think this is a continuous improvement strategy. We have put in place a number of supports and a number of remediation strategies to help students enhance their literacy skills in preparation for the OSSLT. As well, we've distributed to school boards examples of excellent programs that already exist in schools to help students prepare for the literacy test and to enhance their literacy skills.

**Mr Flaherty:** Again, I go back to social promotion. It seems to me—and I say this by way of editorial comment—that parents would reasonably expect that if their child is in high school in Ontario, that child would have basic literacy and numeracy skills by grade 9 or 10.

This is an aside that's not directly in the report, but when I was on another committee in London recently, we heard from folks there about e-learning as being helpful as a remediation tool, particularly for some students who, for whatever reasons, are more comfortable learning in that way. Is that e-learning process being fostered by the Ministry of Education?

**Ms Herbert:** You're quite right that there is research that says that, particularly for disaffected, unengaged kids, male adolescents in particular, e-learning is a way to promote and engage them differently than in the standard classroom. The ministry has a project called the Ontario Knowledge Network for Learning, which is a small project that, at this point, is funding a series of demonstration schools—we call them pathfinder schools—which are both implementing and experimenting, and then we're doing evaluation and research on the results from those schools. There are a number of them across the province to represent different characteristics. We've got one wireless school up in Rainy River and the rest are in urban and rural neighbourhoods.

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So we are doing some experimentation. We've been funding some research. We've also been working with the faculties of education in terms of new teacher training, to make sure the teachers who are coming out of the faculties have a good grounding in ICT.

**Mr Flaherty:** My memory may not serve me well but I thought there were three or four school boards that had advanced quite far down that road.

**Ms Herbert:** Yes, there are several consortia of boards that have put together what I would call virtual high schools in which students can register and take some or all of their courses. Usually students just take some of their courses through that venue. In the francophone education system the use of e-learning is vital. For some jurisdictions, particularly small northern high schools in the francophone system, they do not have the number of students or the teachers able to teach some of the more specialized subject areas. So they are often taught through a virtual classroom or with e-learning tools. There's a 12-board consortium that actually provides those courses to its member boards.

**Mr Flaherty:** In terms of dollars—going back to where I was earlier about resources, which I think is the euphemism for money—do you know what percentage of the operating budget of the Ministry of Education goes to human resources: salaries, wages, pensions, benefits? I know you flow it through the school boards, but do you have that percentage?

**Ms Herbert:** About 75% of our school board operating grant is associated with human resources: salary and wages.

**Mr Flaherty:** That seems to be fairly consistent in the broader public sector.

I want to ask you about the research, if there is any, on class sizes. I saw the chart in here somewhere. It may have been in the ministry material about the number of school boards that have reached the appropriate class size averages, which seem to be fairly high, actually. I saw it in here somewhere. With respect to the proposed hard cap of 20 students, has the ministry costed that?

**Ms Herbert:** No. We're just in the process now of beginning to look at the planning options the government has. There are a number of options about how to implement the government's commitment on capping class size, and depending on the options the government looks at, there'll be different costing ranges. We're just in the process of developing some design options for the government now.

**Mr Flaherty:** Earlier on there was some reference to the school program, the name of which I forget, targeting lower socio-economic areas.

**Ms Wright:** The turnaround school program.

**Mr Flaherty:** The turnaround school program. I was concerned about the targeting of that in this sense: I think the McCain-Mustard evidence is pretty strong, in their Early Years Study, that socio-economic status is only one variable among a number of variables that ought to be taken into consideration. Therefore, they recommended that in the early child development world the programs be universal, not targeted. Has the Ministry of Education considered that work by McCain and Mustard in terms of targeting or not targeting?

**Ms Wright:** We did look at that work. To be more fulsome than in my previous answer, socio-economic

status was only one. In fact, we did choose some schools which had poor performing results on EQAO and were not in low socio-economic areas, in order to be able to do a comparison. We also did it according to having a representation of northern schools, rural schools, aboriginal—the usual desire to have a good mix so we could actually do a good evaluation on what we thought were effective strategies or not.

**Mr Flaherty:** Still looking at research and what knowledge we have, with respect to the proposal that learning will be made mandatory to age 18, does the ministry have any research support for the efficacy of that proposed policy?

**Ms Herbert:** What we've been doing since the government came to power is looking at other jurisdictions, what other jurisdictions' experiences have been, who has mandatory learning to 18, what the design of those programs looks like. So we've done what I would call an inter-jurisdictional scan. The 16- and 17-year-old initiative I think will allow us to offer to the government some design options that have increased experiences for children. When we think about our workplace options, our co-op placements, what the learning opportunities are for children who don't engage in the same way others do, I think this initiative offers us some real redesign options in the secondary school system.

We know, for example, that we have about 24,000 children who leave the system at age 16 or 17. Of that 24,000, do we know where they've gone? No, because we can't track them afterwards. We do know that about a third of them come back before age 21 to get a diploma of some kind, through some venue. We know there are about 6,000 16- and 17-year-olds in the welfare system. That's about as much as I can tell you from an empirical point of view about what the education system knows. Clearly we're going to have to work with our partners at the children's ministry and other ministries as we put the design of this program together.

**Mr Flaherty:** I encourage you on the co-op side. We've had co-op students in my constituency office for years now, including some with—I was going to say special needs—exceptionalities. Those are great programs.

The other proposed policy was—oh, that's that age-18 thing again, co-op placement and apprenticeships. Those are all of the things that you're going to look at. Did you find something comparable in your inter-jurisdictional scan?

**Ms Wright:** We did find some very interesting examples of trying to enhance the school-to-work opportunities. I think what we found most interesting in the inter-jurisdictional was just the extent to which a number of jurisdictions were grappling with exactly this problem. It's not unique at all to Ontario, as you're fully aware. In the UK they've been doing some very interesting work around strengthening those kinds of programs, as well as in New Zealand and Australia. It is always important to understand that that's within the Ontario context and the current system.

**Mr Flaherty:** Last question, dealing with the auditor's report again: On page 131 the educators were talking about poor work habits and so on. "The primary concern regarding poor work habits was the failure to complete assignments, a finding that was also noted in the ministry's June 2001 mathematics survey." Is the ministry in a position to have any strategies to deal with that issue of students not completing assignments—"poor work habits," as the educators describe them—or is that something that is left up to the local boards?

**Ms Rankin:** First and foremost, I don't think we can ever underestimate the capacity of a great classroom teacher to engage students. There was discussion this morning about the importance of a school led by a principal who is committed to building a culture of engagement for everyone. I think those are really huge factors.

In terms of other things that we can do, we try to provide the supports to teachers so they can get ideas of lesson plans, if they might be teaching a grade for the first time or new to the profession, activities that their colleagues who are more experienced teachers have said are tried and true and highly effective in engaging students.

As we look at the ongoing cycle of curriculum review, we are very interested in the observations of practitioners about all of the programs, all of the curriculum, to see whether there is anything in the curriculum itself that could be more relevant and therefore more engaging for the students. So that's very much a part of that cycle, to ask the educators whether there are things that could be more current or more age-appropriate to their students.

**The Chair:** With regard to e-learning, it's my understanding that some North American jurisdictions have a full secondary school program that you can obtain over the Internet.

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**Ms Herbert:** That's true. There are a couple in the United States. There are certainly some being developed in the East Asian communities. We have one fully on-line university in Canada, which is Athabasca.

**The Chair:** Which states have it in the United States? Do you recall? Perhaps you could provide that to us.

**Ms Herbert:** We can find that information out for you, for sure.

**The Chair:** Ms Sandals?

**Mrs Sandals:** Yes, thank you—

**Mr Marchese:** Question.

**The Chair:** I'm trying to balance a little bit of time here.

**Mrs Sandals:** With respect, I think we've had about 10 minutes, and 10 minutes this morning.

**The Chair:** You'll be next.

**Mr Marchese:** I appreciate that. I can wait.

**Mrs Sandals:** I'd like to follow up on a few of the points that Mr Flaherty raised. First of all with respect to phonics, I can assure him that, at least with the board that I'm most aware of, phonemic awareness is a required part of the primary literacy program in every classroom.

So to our school boards using phonics, the simple answer is yes. That is, I think, an out-of-date issue.

The issue around failure to complete assignments, which was just raised, is an interesting comment, because although the auditor brings it up here, what I'm hearing from teachers in schools is in fact confirming what the auditor has noted around failure to complete assignments. The concern I'm hearing from teachers is that in fact the rate of students failing to complete assignments has gone up significantly and that that is related to the assessment practices which were imposed by the previous government, because the assessment model that was made mandatory by the previous government in fact precludes teachers from including a late penalty in the assignment mark. Because teachers are no longer allowed to have a penalty for handing in assignments late, therefore students are handing in assignments late because there's no penalty for handing them in late. I'm wondering whether you have any data around that, because it is a real issue in the schools, and whether there has been any thought to re-examining the policy that seems to be driving the lateness.

**Ms Rankin:** The assessment policy that was developed for secondary schools particularly, but it does go back to the elementary report card as well, was based on the idea that we should not be telling students and parents a mark that is murky because it rolls in so many variables other than student achievement. I think the goal of the policy was to make sure that when the teacher told the parent or the student they had a C or a B+ or a 78 or whatever the mark was on the report card, that wasn't being confused with learning behaviours of the child, behavioural things.

In the past, very frequently, teachers might have included marks for punctuality, bonus marks for helping other students, bonus marks for turning work in early, a number of things that didn't exactly reflect whether the student understood the mathematics curriculum. So the intent of the policy was to separate out those learning behaviours, which are important, and report on them separately from the actual achievement. The intent was to make it clearer for parents and clearer for students.

**Mrs Sandals:** As with many policies, it would appear anecdotally from the ground that the unintended consequence is that students aren't handing in work on time because there is no longer a stick. So I guess just the observation that that is perhaps something that—the auditor has raised the issue. It's clearly coming back from the ground that this is interfering with students' getting the reinforcement in practising that they need through doing assignments, and it is something that perhaps we should revisit as an item, as policy.

The issue around social promotion and mandatory summer remediation has come up. I believe the auditor noted that there was a relatively low rate of elementary students, at any rate, attending summer remediation. My recollection is that the rules that allow elementary students to attend remediation programs are quite strict. Do we have any data around the availability of summer

remediation, the elementary summer school programs? Do we have any data around generally the availability of those programs and whether it's an issue of students choosing not to attend or whether students would choose to attend if the summer remediation programs were more widely available? Do we have anything that would allow us to sort out which is the real issue here?

**Ms Rankin:** The ministry does provide funding for these summer remediation or after-school remediation programs, and a fund of 25 million additional dollars was put in place just for this purpose around literacy and mathematics in the late 1990s. The school board then makes the decision about when to offer the remediation and how to offer it. Changes were made to the funding to make it more flexible for school boards and to actually extend it all the way to grade 12, although it had originally been envisioned for elementary and then 7 to 10, and so on.

We do not, in the work that I'm doing, have details about which boards are getting which students, but your suggestion that, even where it's offered, not every student who's eligible might take it up is certainly a valid one. There is an element of parent and student choice. School boards are offering the programs in a variety of ways, so I think we certainly could learn more from them about what's working well.

As part of our at-risk strategy, we've been trying to gather information about effective practices, including practices like school boards that are not running remediation classes in the summer but summer learning camps, and are finding that they're getting great results that way.

**Mrs Sandals:** No, I just wondered if you had any data around students who would like to attend. I know I certainly used to get calls from parents who in fact would like their students to attend, but in essence they hadn't performed badly enough to get into the pot, because by the time you spread \$25 million over 72 boards, it's not a huge amount of money. What tends to happen is that you often have parents knocking at your door, asking, "Can I get in?" and in fact the student can't get in because the program is already fully subscribed.

**Ms Herbert:** I think it would be fair to say that we have poorer data at the elementary level. We have fairly good secondary school level data, and that's part of our trying to move the Ontario educational number into the elementary schools so we can begin to track in a much better way.

**Mrs Sandals:** Anyway, it just occurred to me that some of the issue here is around, if we are going to link social promotion and remediation, then we have to make sure that experience is actually available for summer remediation. You can't make it a requirement if it isn't available.

I would like to—I'm sure you're not surprised—go back to the issue around the design of the secondary curriculum. Certainly the deputy alluded in her remarks to this being a discussion that has been ongoing for a long time. I can certainly verify that even before the

curriculum documents were published, there were alarm bells going off about the group of students we've been talking about being at risk and whether the secondary curriculum was appropriately designed to take care of the needs of all the students. The auditor seems to be talking about the appropriateness of the curriculum for applied students and that being part of the curriculum review.

I'm delighted to get part III of Dr King's report because, as you know, I've had a bit of an interest in that in the past. So it's very nice to have the third part of his work here. I'd like to look at a few of the recommendations.

Because we've got the executive summary—it seems to be (ii)—I guess what he's first of all doing is capturing his findings. The second one is that “low levels of achievement in grades 9 and 10 applied courses, especially mathematics, act as a deterrent to student motivation and to subsequent graduation.” What he's really saying in plain language is that kids aren't picking up those grades 9 and 10 applied math credits, and if you haven't got the grades 9 and 10 applied math credits, then you're never going to graduate. That's essentially what he's saying there—assuming that you're in applied because you can't do academic, OK?

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He then goes on to observe on the next page that “the grades 9 and 10 applied courses (especially grades 9 and 10 mathematics, English and science”—and he cites some others and makes quite a strong statement—“must be modified to be consistent with the needs and abilities of the 25% of students who take them.” Math has been the hottest topic of all. I know that you have stepped up the cycle on which you're going to be reviewing math, and I thank you for that, because it's obviously the one that's critical to review. I was very pleased when you moved that forward in the review cycle.

I guess the question is, given some of the concerns the auditor has picked up around this and certainly given the concern that Dr King has picked up—because he's looked at this in great detail over three years—when we do that grades 9 and 10 math review, are we open to not just tweaking the edges but actually having a serious review of whether that course is pitched too high, to put it simply?

**Ms Wright:** Yes. The terms of the review are to look at the level and number of expectations, and in particular the sequence from grades 7, 8, 9 and 10, and to take that as a sequence. We know from even the first year of this that we've done that there is a fair amount of clarification of the expectations as well that we can do just in general. So, yes.

**Mrs Sandals:** I thank you for that, because for anybody who has followed this saga, there was a lot of stress around the university-bound kids and the double cohort. But clearly what has happened is that the academic stream, university-bound kids—there's been a lot of kaffuffle and uprooting and stuff, but they have settled in and that stream is working reasonably well.

What clearly isn't working reasonably well is the applied stream, particularly at that beginning level. It

seems to be pitched at a much higher level than the old general courses and it clearly needs some review. The data—and this isn't educators whining, because I know it's often pitched as educators whining; this is one of Queen's University's pre-eminent researchers on educational issues saying, “Look, here's what's going on.” So that yes is wonderful.

The second piece of this is the essential credits, the locally determined credits. I would probably describe this a little bit differently than Mr Clarke in terms of its history to some degree. I can remember when this first came in that there was a great concern about that small number of students who used to be in the basic level courses and whether there was anything there for them. While I would certainly agree with Mr Clarke that one of the things you can do with a locally developed credit is if you had a speciality school, you could design some wonderful locally determined credit and have a few of them.

But the way this thing unfolded, from my point of view, is that at the very last minute there were these locally determined credits floated in. There's a maximum of three of them. If you look at the structure of the curriculum, they don't even show up on the mainstream structure of the curriculum. What school boards have generally done is come up with what have come to be called essential credits. Typically, what happens is the three subjects that are the hardest in grade 9, which are English, math, science, the kids will take these three essential credits. However, the ministry policy says that you can have a maximum of three locally determined credits, which means, having done that, where do you go? The problem is you've then got to go back into the applied stream, and as we just discussed, the applied stream has some hiccups in it, even for those who start in it.

What happens is we're ending up with a large number of students who probably would do quite well in the grade 11 and grade 12 workplace courses, but there's literally no way they can get from grade 9 to grade 11 because they can't handle the grade 10 applied and they can't get to grade 11.

As Dr King observes—again, this isn't just a whiney educator. Dr King's observation, which Mrs Munro picked up on, is, “Since grade 10 essential skills courses do not qualify as required course credits, the transition to grades 11 and 12 workplace preparation courses for students who take the grade 10 essential skills course is adversely affected.”

I think what Dr King is saying in a more learned manner is more or less what I just said, which is you can't get from grade 9 to grade 11 if you happen to be one of these students.

Dr King goes on, over the page, to suggest a solution, which is that “assigning required course credit value to grade 10 essential skills courses in English, mathematics and science would facilitate the transition of students” to get to grade 11. The issue being that those courses exist, but seeing as they don't count as credits, there is actually not a whole lot of point in taking them. If they counted as

credits, that is, if one increased the number of permissible credits in this package from three to six, which is what Dr King is saying—allow these to have credit value—these students could then get to the workplace courses and might actually manage to graduate. What I think the auditor is getting at is, does the new curriculum allow people to actually graduate?

Unfortunately, this doesn't come under curriculum review, because they're not ministry courses. So you're never going to review them. The question is, are you planning, as part of the whole curriculum review, to review as well what actually counts as a required credit or what can be counted as a credit in order to get from here to there?

**Mr Clarke:** This has come up not only in the report from Dr King, but of course it was brought up as well in Barry O'Connor's work on the working group on at-risk students. It was brought up again in the subsequent work of the Program Pathways working group that David Armstrong chaired, from the Bluewater District School Board.

Yes, of course we are talking. It will be a topic and is a constant topic with the board leaders and other folks within this—

**Mrs Sandals:** As you well know, it has been a constant topic with me, because I feel like I've been banging my head against the wall on this one for a very long time. And you don't have to answer this one. The political resistance to "Will you change the policy?" was, "No." I understand that this is not your fault. You can only change the policy if you've got permission to think about changing the policy.

**Mr Clarke:** I think, for what it's worth, since I was asked to answer the question, the challenge will be to build a pathway that actually gets students to grade 11 workplace or college preparation courses.

One of the other findings in the King report is that there is a fairly clear group of students who are taking all the courses for university admission purposes. Then, in what he calls the other group, which is not intended to be disparaging, students are taking such a jumble of courses with different types of expectations about where they're going. For example, there will be students, who may be candidates for locally developed compulsory credit courses and then in grade 9, potentially grade 10, a combination of applied courses as well, who have college as a preferred destination.

The trick will be to ladder courses in some fashion that you can construct credible pathways, or we'll continue to have the phenomenon of students deselecting themselves from these courses, which then gets to the point—and Dr King makes this point in his report as well—where lots of schools don't offer all the courses that are the building blocks for the students to get to the programs and get the preparation they need. That's an issue we have to work through with the system as well.

1400

**Mrs Sandals:** I agree with you totally there. It's actually a wonderful segue into one of his other comments, which is around some direction from the ministry.

**The Chair:** Ms Sandals, this will be your last segue, will it?

**Mrs Sandals:** Yes. I have part (a) and part (b), but it's all on one topic.

**The Chair:** You've had 20 minutes.

**Mrs Sandals:** The issue is around there being a huge amount of curriculum in the new curriculum and it presents itself in two ways. At secondary, it presents itself as a huge number of credits, which particularly small schools cannot hope to offer, and it would be very helpful if the ministry could provide some sort of direction on narrowing that down to the "must offers" in order to have credible pathways.

It presents itself in a different way with the elementary curriculum, which is, when looking at a particular grade and subject, you've got a huge amount of curriculum within that grade and subject. Can the ministry provide some direction around "must do," "should do" and "could do"? That's something that might naturally fall out of your curriculum review. Is that something you are inclined to address? Because that also has to do with successfully getting kids through the curriculum: focusing on what they really need to do.

**Ms Wright:** In the curriculum review, as I said previously, we will be looking at the issue of whether we have the right type of expectations. After this round that we're just finishing, we'll have to take a look at what the policy implications—which is what I would call that—are for the rest of the curriculum.

The first year we did this we were experimenting a little bit with whether we got it right or not. Part of our own learning from that process will be, do we want to make a recommendation to government to go that route or not? I think it's a very important question.

On the secondary, with just the number of courses, I think we will be looking at providing some sense of what we got right and wrong on that.

I also think we need to get a better handle, beyond the King report, on what courses are being offered right across the province. As you know, King is a sample of schools, so we're a little hesitant to go too far in this without a better understanding of the extent that the courses are or are not being offered, and in particular, in rural and northern areas.

**Mrs Sandals:** It's a huge issue. Thank you very much.

**The Chair:** We have about an hour left. On my list, Mr Marchese is next. Then I have Mr Patten, Ms Broten, Mr Zimmer and Mr Mauro. You're entitled to a full whack of time.

**Mr Marchese:** I appreciate the whack of time. I hope I don't get whacked.

**The Chair:** You will, probably.

**Mr Marchese:** I'm going to have to be brief, obviously, or I'm going to run out of time. I wanted to talk about the issue of age 18 and suggest it's the wrong way to go, but you'll do what you have to do. I appreciate that. I think it's a serious mistake. I wondered whether you knew if lawyers have to do upgrading courses on a regular basis or not.

**Ms Herbert:** In terms of their professional standing?

**Mr Marchese:** Do they? Do you know?

**Ms Wright:** I'm not a lawyer.

**Mr Marchese:** I want to talk about social promotion. If I've got time I will get back to that. I hope Mrs Sandals has the effect she hopes she will have, being in government versus being on the outside. I wish her luck.

I want to focus most of my attention on the whole issue of elementary—not versus secondary, but what we need to do at the elementary level in order to deal with all the questions that we're trying to deal with, with the failures at the secondary level.

I started talking about that earlier on, saying that unless we put resources, which for me means money, at the front end, which is the elementary—and in most cases, I argue, JK and SK—then we will be always spinning our wheels and we'll be back here 10 years from today saying the same things in the same way that we're talking about senior abuse. We've done study after study every four years, every six years; 20 years later we're still facing the same problem about abuse of seniors. It goes on and on because we never really tackle the problems the way we should.

I believe front-ending resources is critical to solving secondary problems. What I gather from you is that you're going to have early reading strategies as a strategy to help; you're going to have lead teachers in math and English, is what I think you said. I'm not quite sure what else you were suggesting by way of your knowledge of what you can do which is within your control as a ministry in terms of educational techniques and methodologies, what else you recommend at the front end, grades 1 to 8, to deal with the problems that we face in grades 9, 10, 11 and 12.

**Ms Herbert:** Mr Marchese, to go to your resources question, just to be clear on the early reading strategy, we funded \$24 million to the elementary system for that initiative, and \$15.8 million in 2002-03 to introduce the early math strategy. There is \$30 million in 2003-04 to expand them from grade 3 to grade 6. So just to be clear, there were some resources that went to the system in terms of supporting those initiatives.

**Mr Marchese:** And you're going to be tracking the effect of that. Did you say that earlier? I can't remember. So you'll be tracking it on a three-year cycle again, or every year, in terms of its effectiveness? Do we know?

**Ms Herbert:** The primary effectiveness measure for that initiative is the grade 3 and grade 6 EQAO assessments that happen annually.

**Mr Marchese:** That's how we will measure the effect of these programs. Is that what you are saying?

**Ms Wright:** In addition, we are doing an evaluation, which will happen over this year and next year, to ascertain the effectiveness of the level of the training intervention.

**Mr Marchese:** The results would be public, I'm assuming, at some point. We wouldn't have to ask you; you'll just release the results. Is that the way it would work?

**Ms Herbert:** Our evaluations of educational interventions are normally public.

**Mr Marchese:** In-house or public. OK. So you are spending some money on those early reading strategies, math and reading and so on. Is there anything else that you think you should be doing to deal with problems that you face, that teachers face, at the elementary level?

**Ms Herbert:** We're also of course working, as part of students at risk, back to grade 7. So if you think about the initiatives to grade 6, we are looking at students at risk. We've provided on the literacy agenda trying to segue grade 7 students through to the grade 10 literacy test, so there's an initiative there. We obviously will be doing some future work for the government, because they have a commitment to lower class size.

**Mr Marchese:** You're looking at that to see how you might make that work.

**Ms Herbert:** That, too, is a resourcing issue at the elementary level.

**Mr Marchese:** Absolutely. You were asked about costs, but I'm not quite sure you were—because that's part of the study in terms of whatever you might recommend to be done. But you do agree that reducing class size would be a great initiative?

**Ms Herbert:** There is, on reducing class size, a real issue for parents about wanting to see, for their children, when you walk into a classroom that the class size looks like a reasonable class size.

**Mr Marchese:** Educationally you think it's a good idea, don't you?

**Ms Herbert:** I think the Ministry of Education would say that the initiative of the government is a positive initiative.

**Mr Marchese:** If we had full-time JK and full-time SK, would you think that would be a great initiative educationally, socially perhaps? Ecologically, too?

**Ms Herbert:** I think the research on the appropriate early learning models is a very interesting question. There are, in different jurisdictions, different models. To indicate that for JK and SK full-day is the only model—

**Mr Marchese:** No, not the only model. We're not talking about the only model, but do you think it's a good idea?

**Ms Herbert:** I think it's worth exploring other models of providing early learning.

**Mr Marchese:** I think it would reduce inequality. It really would. It makes sense that it would. You probably agree with me that kids come to the educational system unequal.

**Ms Herbert:** In terms of their readiness to learn? Yes.

**Mr Marchese:** There is a socio-economic difference between us which brings about academic differences because usually socio-economics are not just money, but also professional; sometimes the two go together. Kids come into the system unequal. Kids who come from professional homes—and money is a big part of that—are going to do well. They come ready to learn, right? Some other students who face difficulties—social difficulties, economic difficulties—are going to have a hard

time. We agree with that, more or less, yes? So if we recognize there is a social equality difference, we have to resource differently and we do need money to deal with that issue. Some of it is educational, but some of it is beyond education in terms of what we can do.

1410

That's why I think it isn't just a strategy of techniques. Phonics won't solve the issue of poverty; it just won't. That's why we in education say you've got to use whole reading and phonics at the same time—we assume that's what they're doing. But to replace whole reading and just substitute phonics isn't going to solve the problem; it's just not going to do it. Do we probably agree on that too? So it's important to front end in order to deal with socio-economic differences that will show up in grades 9 and 10.

My point to you as a deputy, and to the others, is that unless we find ways of solving the inequality we face in our education system very early, we are perennially going to have all these problems. All the research you do about e-learning or whatever other things might work for students—maybe soccer will attract some students, and maybe teachers should talk about that—is going to be for naught unless we have a broad strategy that deals with the educational social problems.

**Ms Herbert:** When I talked about different models—to give you some examples, there's the garderie model in France, which looks at three-and-a-half-year-olds. It's not a JK-SK model.

**Mr Marchese:** I know.

**Ms Herbert:** There are the first-duty schools here in Toronto, which are an interesting model of a combination of child care, JK-SK and parental support workers. There are a number of design models around early learning. I don't want you to think I'm disagreeing that this is a really important area. The present government has a commitment to a best-year strategy, which the children's ministry has the lead on. It's an important area.

**Mr Marchese:** I guess what I'm looking for from the ministry—and I'm not sure it's independent of the minister, because the minister and the government will have different initiatives. Sometimes I wish the minister would say, "We want to have a public debate, not just on good practices; we want to look at inequality, we want to look at how the system perpetuates itself and how we break that cycle." It would be so lovely to think that one of these years the ministry would come up with a discussion paper that said we were going to deal with it. That's what I'd love to hear every now and then, but I understand the difficulties.

The other recommendation I have is that you look at how we train principals on a regular basis. Unless we have good curriculum principals who are able to work with teachers and know how to work with teachers and parents, we're in trouble. It doesn't matter what kind of training you do to help the teachers and then get that to the teachers, it's the principal who is the head of that school. Without that individual being in the loop with all the possible curriculum strategies, including the social

understanding of how things work, we'll be spinning our wheels.

I want to get to the issue of the \$112 million that went to literacy. In Toronto, did the \$46 million go for literacy? Is it going for literacy?

**Ms Herbert:** The \$46 million was on the LOG grant and the ESL grant to Toronto.

**Mr Marchese:** The board evidently solved its deficit problem by taking out \$50 million, which they borrowed and which will be amortized over a 10-year period and be paid off, to deal with the deficit they had, which was \$90 million or \$100 million. I understand that the way the Toronto board dealt with the elimination of the deficit—and I think Minister Kennedy announced just today that they could now get back into power as a result—was to use the \$46 million that's supposed to go for ESL and literacy to students in Toronto who desperately need it.

**Ms Herbert:** As you know, Mr Marchese, the education funding formula is an allocation formula. What we do is allot money on the basis of particular criteria, in this case the LOG grant and the ESL grant. The board then takes their allocation and makes decisions about how it will use that money.

**Mr Marchese:** That's so clever. I appreciate that you have to present it as such, but that money went to the deficit. It's not being used for ESL, and it's not being used for literacy. I just want to announce publicly that I think it's a shame. The board needs that money for ESL and literacy, because it's got a lot of poor kids in the system who desperately need those resources to help them get out of the cycle. I feel sad that the way they dealt with the deficit was to use that money. I just want you to know publicly that I know and that I feel very angry about that.

In terms of the grade 9 problems we're having—the King report and how we're failing so many of our students—could you again, because I might have missed some things, recap for me what we have learned over the last four years and what initiatives you have taken to deal with the fact that every year students are just not able to cope with the applied program, just a little recap so I know what you're doing, and then tell me how you're going to track the success of whatever initiatives you're taking.

**Ms Wright:** The primary initiative falls under the students-at-risk initiative, in which we've done a number of things. We've provided resources for school boards so they can have a leadership capacity at the board level.

**Mr Marchese:** Right. That was the 20 million bucks.

**Ms Wright:** That was \$10 million of \$50 million.

**Mr Marchese:** Leadership—

**Ms Wright:** They can hire an at-risk board leader to help work on developing school-based and board-based plans for addressing the needs of students who are at risk of leaving the system. In addition to that, we provided \$40 million that the boards could use to actually do their own programming and initiatives to support those kids, on the premise that this was not a one-size-fits-all approach and that there would be local flexibility to

develop those programs, and we put in place some accountability for enabling that to happen.

In addition, as part of that initiative, we brought together two expert working groups. One did a report on teaching literacy to adolescents, which has been released and that I think is on the table over there, and a second report that they'll be releasing this spring on teaching kids mathematics. We brought together the second expert panel to look at how we could strengthen school-to-work programs as well as identify pathways for kids who were struggling to get through. That's what we did under that initiative.

In addition, we brought in the Ontario secondary school literacy course, which was for kids who were unsuccessful in the OSSLT and needed a different assessment method.

**Mr Marchese:** What year is that literacy course?

**Ms Wright:** It was brought in this year.

**Mr Marchese:** For what year?

**Ms Wright:** It's at the grade 12 level.

**Mr Marchese:** Do you think that's the right time to have such an intensive literacy course?

**Ms Wright:** In our consultation with the sector, they thought that was the appropriate time to have it.

**Mr Marchese:** It's not grade 9, not grade 10, not grade 11 but grade 12 before they're condemned?

**Ms Wright:** The sector's perspective on this was that they preferred that the kids have the opportunity to take the test and try it rather than to take a full course. It was actually at the recommendation of the sector that we did that.

In addition, we put in place a number of supports to teachers around teaching math, to address the applied math question. Kit has referenced a resource we've done called math TIPS, which is a pretty detailed plan for teachers to teach math to adolescents. We've also released a resource called Think Literacy, which is an attempt to do the same thing on the literacy side. I'm running out of steam here; I apologize.

**Mr Marchese:** I want to ask one last question before Julia cuts me off: Are all these suggestions listed anywhere in a sort of one-pager so I can see them?

**Ms Wright:** I could get it to you; it would be no problem.

**Mr Marchese:** Could you do that, please?

One last question, and then hopefully I'll come back and have another turn. On page 8, section 6.4, the auditor talked about "Strengthening the Implementation Process." At the end, he concludes: "It was noted"—I don't know by whom—"that having comparable student performance results would provide valuable information for identifying problems and best practices and might lead the ministry to reconsider the need for large-scale testing." Do you have a response to that?

**Ms Herbert:** If I could find it, I might. Sorry, Mr Marchese.

1420

**Mr Marchese:** "It was noted that having comparable student performance results would provide valuable

information for identifying problems and best practices and might lead the ministry to reconsider the need for large-scale testing." Have you thought about that? Have you ever thought about that? Are you thinking about it? Does this lead you to think about it?

**Ms Wright:** In our discussions with the auditor on this recommendation, I think an interesting point for us was the need to put in place the student number. Without the student number, which we're just putting in place, it would be difficult for us to have meaningful comparable data. It would be useful to have more comparable data on how students are doing than just EQAO standardized testing—I think that's true—but we do have an implementation process.

**Mr Marchese:** So you're saying that once you have the student number, this question might become more relevant?

**Ms Wright:** Worth exploring, yes.

**Mr Marchese:** Without it, it's hard to comment.

**Ms Wright:** Without a student number, it's hard to get comparable data.

**Mr Marchese:** Right, and I appreciate that. But in your own mind, intellectually, I think you would be able to say, "Yes, I think we could," or, "we couldn't," or are you just saying, "Once we get the numbers, we'll have a better idea"? Do you intellectually have a sense that maybe this is the right way to go?

**Ms Wright:** Yes, I think any information that helps us better understand how students are achieving would be useful.

**The Vice-Chair (Mrs Julia Munro):** Thank you very much, Mr Marchese. We'll move on now. We do have to be cognizant of the time. Mr Patten.

**Mr Patten:** This is an interesting discussion, to say the least. Just a comment, if I may. You see the pendulum swing this way and swing that way. The auditor used an important word: to "coordinate" some of the curriculum development on a province-wide basis as opposed to centralization of the whole process—every kid has to pass the whole thing—which is a bit of where it is now. I think it partly addresses what you're trying to get at.

In the first place, teachers thought there was a lot of hard work in all of this, which there was; there was a lot of good research; there was a tremendous amount of planning. Then in the first couple of cuts at it, we see where the casualties are, and those are what we call kids at risk. This is not a value-free system. When we use the term "not successful," that for me is not a good thing to say. They're not accomplishing what others may hope they would accomplish in the system, but there's not much acknowledgement that this isn't necessarily for them, if we believe in the research that says every child learns differently, every child learns at a different rate, every child has different potential and every child in one way or another perhaps comes from a different kind of background with a different set of perceptions about the past, present and future.

With all those variables, that's why I say the pendulum swings. The more research we do, I prophesy, the

more we will add flexible dimensions back into this province-wide arrangement, unless they stay as basic overall indicators and not hard and fast rules. I think it would be a mistake if we got sucked into: "Unless a kid passes this, they are dead forever." That's just not the case. There are a lot of kids who don't complete high school and who do better than kids who did extremely well at the end of high school. Some of them are on welfare and they're very bright; some are even college students. So there's a hell of a mix in all this. I just wanted to make that comment.

Obviously we have to look at how we make this the most effective system, and we're looking at that. The other is, if it turns out, and I suspect it will, that this will not be one size fits all—I think this was mentioned this morning—this is not necessarily a test for everybody to indicate their learning or what have you. It's like the tests we have at the grade 3 or grade 4 level: They may not achieve a high level on the test, but it doesn't tell you what incredible learning they may have had in the first two or three years because they couldn't speak a word of English or French when they arrived in Ontario. That's the unfortunate part about this, but it has a lasting impression on kids and their feelings of adequacy—"I'm a failure" or "I'm stupid"—or all those kinds of dynamics that still go on.

Anyway, I have two very quick questions, because I really don't know about this. I'm the PA to education but I haven't been to all the briefings. I really don't know that and I have too much respect for the committee to just BS people—which means baloney sauce, by the way—by pretending I know something and asking you a set-up question.

The auditor did identify that there were more and more opportunities for the ministry to provide resources for teachers through computerization, e-mails or software, and yet—I forget what the percentage was but it was a pretty high percentage—apparently close to 48% of the teachers don't even have a PC and most of them are probably not particularly computer literate to begin with.

It seems to me that if the teacher is so important in all of this and we're trying to provide personal growth development experience and training experience, but she or he doesn't have some of the fundamental tools to be able to sit there, look at things and translate them into other areas—and the kids themselves are learning more through this—we've got a bit of a literacy gap for teachers. It seems to me we've got to do two things: (1) encourage them and (2) provide some of the resources for the hardware and software, and change somewhat the culture of "You don't need a lot of this stuff." Maybe this is only the medium-aged and older teachers in that board. Would you comment on that?

**Ms Herbert:** Certainly. Maybe I can just take that segue to go back and answer—oh, Mr Sterling isn't here. But maybe for the record I can give you the states where they have a diploma on line. It's Illinois, Louisiana, Utah, Kentucky and Maryland.

Having said that, to come back to your point, there are a couple of things we know. We know that almost all of our schools except in some remote locations have bandwidth. There are some parts of the province—north-western Ontario—where we have some bandwidth problems, which is why we're experimenting a little bit with wireless, to see if that's an alternative. And there are a couple of places where we're actually building on some of the aboriginal communities' bandwidth that they've had funded from the federal government. So bandwidth, slowly but surely, is not going to be a problem for our schools.

On the issue of tackling teacher ICT training, we've started in the obvious place, which is the faculties at the universities, with the new teachers. Two of our faculties are now what we call laptop faculties, that is, a laptop is a requirement for the faculty. That's Nipissing and the new university in Durham.

**Mr Flaherty:** UOIT.

**Mr Patten:** You would expect that, hopefully.

**Mr Flaherty:** It's state of the art.

**Ms Herbert:** Windsor is about to make a decision, I'm hopeful fairly soon, to look at being a laptop faculty. In the other faculties of education we've been doing work with, we have a person to help them work through how to build ICT into all of the training they're doing with their teachers, not as an add-on but it actually becomes part of the way the professors teach. All of the faculties are now looking at ICT competencies for their new professors. As professors come in, one of the new competencies they have to have is ICT learning. So we are tackling the teachers coming in in a fairly organized fashion.

On the question of infrastructure in the schools—PCs, computers—you're right. What we know from our survey data is that probably only about 15% of teachers have dedicated computers, that is, a computer on their desk or a laptop. We also know that the ratio of students to computers is about one to six, which sounds fine except we suspect that a lot of it is to old computer systems. Through the funding formula, we provide about \$100 per student per year on ICT. But the question of—

*Cell phone ringing.*

**Ms Herbert:** It's very romantic, Mrs Sandals.

**Mrs Sandals:** There are only two songs on this phone. The other one is Hockey Night in Canada.

*Cell phone ringing.*

**Mr Patten:** Turn it off.

**Mrs Sandals:** I will.

**The Vice-Chair:** I'll have to exercise my authority here. Take it away.

**Mr Marchese:** You were really tough, Julia.

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**Ms Herbert:** The ministry has been doing work on two fronts, as I said earlier. We've been looking at pathfinder schools and at the ministry's role in terms of our legislation and our regulatory framework, whether it supports e-learning and what some of the things are that the ministry has to do to bring the ministry itself up to date in this area. I would agree that we could and should

look at how we can build more professional learning in on ICT for teachers.

I met with a group of teachers just a couple of weeks ago at a program that we're providing a small amount of funding for. These were teachers in mid-career, later career, and their enthusiasm for having been part of an initiative that in a sense forced them positively to use ICT, their enthusiasm for learning new teaching strategies through ICT was really quite—I was quite taken by how they portrayed what it had taught them and how it had helped them in their classroom.

**Mr Patten:** I just have one quick question.

**The Vice-Chair:** Mr Patten, you're cutting into Ms Broten's time.

**Mr Patten:** OK, my last question. The auditor identifies that with the quickness of implementing the curriculum, some school boards were caught short with resources and some didn't have textbooks. That was probably magnified somewhat for the French boards, just by virtue of the size of the population and the need to have more specific textbooks for its curriculum and all that kind of thing. Where is that at, at the moment? I continue to get some feedback that some of the French boards are still feeling they're resource-short in order to really address the curriculum.

**Mr Denis Vaillancourt:** Denis Vaillancourt, assistant deputy minister in the Ministry of Education. On the French-language textbooks, we have the following breakout for the core and non-core courses: We have 46 approved textbooks right now, supporting 59 courses out of 180 potential courses that are offered at secondary grades 11 and 12. Obviously, some of those 180 courses aren't developed or offered and are not taken. We work with the sector in identifying those courses that are taken and we have been working with publishers to do the rest of the books. For grades 9 and 10, we have 28 approved textbooks, supporting 19 courses out of the 64 possible, and we are continuing development there. In grades 1 to 8, we have 79 approved textbooks, supporting 19 programs out of 53 subjects taught in grades 1 to 8.

By September of this year, we will have a complete selection of textbooks for the basic diploma requirements, so we're progressing very well. As a matter of fact, just this week we've been working with Quebec publishers, enticing them to put their names in the hat to produce textbooks for this province, and they are going to come in on that. So that's looking very hopeful.

**Mr Mauro:** I just wanted to pursue the issue a little more about social promotion and the policy that exists that allows the principal of the school to make decisions around that. It's not a new idea; it's been around for some time. How long has that—

**Ms Rankin:** I'm not aware of the time when elementary schools had the decision made for promotion by anyone but the principal. For secondary schools, in the late 1960s there were examinations for secondary—

**Mr Mauro:** OK, so it's been around for a long time. Those responsible for the creation and implementation of

the new curriculum obviously were aware that this policy existed. Would it be fair to assume that?

**Ms Rankin:** Certainly the responsibility of the principal and the teacher to decide, yes.

**Mr Mauro:** Those same people who were responsible for the creation and implementation of a new curriculum would have been aware of the potential negative consequences that curriculum would have, being that this policy of social promotion was existing at the same time. Perhaps it would have made more sense for us to deal with that policy first before the curriculum was implemented—would that be a fair comment?—rather than to blame the policy of social promotion for the results we saw after the curriculum was implemented.

**Ms Rankin:** I think what was done with the changes in education policy was, report card policies and assessment policies were put in place to describe what the expectation was for promotion of the student and to provide supports to help with that decision.

**Mr Mauro:** Yes, except that the new curriculum comes down at a time when we have a bunch of people who have already been socially promoted and who aren't ready and able to deal with the new curriculum. So I guess my question is, to put a finer point on it, should we have dealt with that before the curriculum was implemented? We knew there were people who were not going to be able to handle the breadth of the curriculum, the depth of it, and the fact that it was going to be administered in a shorter time frame. So I'm asking you what you would have thought would have been a good idea to suggest to the government of the day around the timing of the implementation of the new curriculum.

**Ms Rankin:** I know that school boards, teachers and principals worked very hard to manage the implementation in an effective way to support students throughout it. I know that when the assessment policy was first introduced for secondary schools, there was an indication that teachers were given a little bit of time until additional supports and training were put in place before full implementation of the policy. So I certainly could point to that as one piece of evidence that there was consideration given to the fact that it would take a little bit of time to make the change and to implement the new policy.

**Mr Mauro:** The curriculum is implemented at a time when the policy of social promotion exists, correct? So I'm simply asking if you as a ministry thought that perhaps it might have been a good idea to delay the implementation of the new curriculum, which by most accounts was accepted as being a good idea; it was the implementation of it that people had concerns about. We already know that there are kids in the system who have been promoted beyond their academic abilities. We know that before we implement the curriculum, yet we go forward and we do it anyway. So I'm trying to get you to tell me if you think we should have delayed the implementation of the curriculum to allow those kids who had been socially promoted an opportunity to catch up to a

curriculum that was already more demanding than the one they were probably unable to keep up with.

**Ms Herbert:** I don't know what options were put before the government of the day when they looked at the implementation time frame. One of the difficulties, as I think I said earlier, for making any changes in education is of course that we're keeping the system running while we're making the changes. And the question about how long is an adequate period of time within which to make those changes and in what nature those changes should happen—clearly the government of the day made a decision that it preferred that length of change to be shorter. Even so, it's been eight years that we've been doing curriculum reform—nine. I'm just trying to think back—to 1997.

**Mrs Sandals:** It was 1996 when it started.

**Ms Herbert:** So we're at eight years. I'm showing my math skills. I should be taking those math TIPS.

The length of time the government chose to have the system do that reform—clearly it was their best judgment that that was the time frame they were prepared to—

**Mr Marchese:** The question is a political question. Please leave her alone.

**Mr Mauro:** The implementation, as it was about to go forward, received caution signals from a lot of different groups in the province, whether it was the teachers' unions or principals' groups or parent councils or former educators. Many people understood, going forward, that if it was implemented the way it was proposed, there would be the so-called curriculum casualties, and we've seen that borne out to be true. I think we all agree with that. I guess I'm just wondering what your ministry's position was at the time that the implementation was occurring, what your advice was to the government of the day. Were you in step with the process, or did you have a problem with the way it was rolling out?

**Ms Herbert:** I can't answer that question. I wasn't there at the time those decisions were made.

**Mr Mauro:** How about one of your teammates here? Is there anybody sitting in the back who perhaps was—

**Ms Herbert:** Is there anyone who was in a position to have been party to those discussions? No, there is not.

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**Mr Mauro:** There's nobody in the back who would have been party those discussions? Mr Clarke wouldn't—there's no history at all? OK.

In terms of the testing, I'm just wondering if there is an ability within your tracking mechanisms to view the impact on First Nations and aboriginal communities and how they do if the tests are culturally sensitive for them, any of that kind of thing.

**Ms Herbert:** It's a very good question. First of all, to step back, we do not provide education to First Nations. That's a federal government responsibility. First Nations, if they—

**Interjection:** On reserve.

**Ms Herbert:** On reserve.

**Mr Mauro:** Understood.

**Ms Herbert:** Just to finish that thought, though, if boards wish to, reserves can choose to offer our curriculum and offer the Ontario diploma. That's the choice they have, and many boards avail themselves of that choice. I know there are some concerns that have been raised about First Nations, and First Nation languages in particular, around how we treat ESL and whether First Nation languages are part of ESL. There have been concerns raised about that. Dr Rozanski referenced that in his report.

In terms of the cultural sensitivity, and if you'd just repeat the cultural sensitivity question and its relationship to—I'm sorry, I missed that.

**Mr Mauro:** I think if the First Nations people are coming off reserve and going into urban schools and taking those same tests, they are likely not to be as able to do well on those tests, I would think.

**Ms Herbert:** I can't comment on the content of the test. That's an EQAO test, not a ministry test. As well, you probably are aware that we have a court case alleging that the test is not culturally sensitive. I'm not about to speak to that issue.

**Mr Mauro:** That's fair enough.

I had some questions about the dropout rate since the implementation of the new curriculum. Have you got some numbers on that, predating and postdating the implementation?

**Mr Clarke:** We have a couple of sources for that, and I'll tell you why there is more than one answer to your question. To go back to the Royal Commission on Learning, the estimate in that document based on research of the day was that in Ontario the dropout rate ranged from 18% to 30%, depending on how you calculated it, and they concluded it was closer to 30%. It would net out closer to 20% if you take into account maybe the third of learners who come back over a number of years, up to 21, 24, let's say, and get something like a second chance, the equivalent to a high school diploma.

Of course, the King study talks about a 25% potential dropout rate. This is not based on actual mining of the data that we have. You have to appreciate that this was based on a comparison of students who started the first new grade 9 in 1999-2000. So we don't have all the information yet about what has actually happened to those students to be able to confirm Dr King's assertion that 25% of these students are at risk. It's an estimate based on the idea that credit loss is associated with a greater likelihood of dropout because people get discouraged and they don't see the likelihood of their being able to graduate, so why stay in school anyway. That's underlying the assumptions about dropout rate.

There are other sources of dropout rate. If we look at the OECD statistics or the statistics coming out of the Council of Ministers of Education and the comparisons across the country or the labour market statistics from the federal government, from StatsCan, you get another number. You get a number that says that in Ontario the dropout rate is somewhere between 10% to 12%. They've calculated it somewhat differently.

We're just now going through the process of saying, "OK, the ministry hasn't had an active way of collecting dropout rates," which you can do in a number of ways. There's a great debate about what is the right way for the right purpose, and we're going through that process now. What I can say is it's likely that there are two ways to look at it which would show up in the kind of analysis that the federal government does on dropouts and that's a snapshot of a group of people in a given year, or an "event rate," it's called. It's how many students at this point in time who aren't in school and don't have a diploma. That will give you a lower number.

The bigger number, the one that Dr King mentions, around 25%, is if you track a group of students from a particular point in time over four years, five years, six years, and you add up all the kids who might drop out along the way and not return, you'll get a cohort number for dropout. You'd have to do that every year. That would bring you closer to the 25% over a period of four years or five years, when you would expect students who started in grade 9 in Ontario to have graduated in the new program.

**Mr Mauro:** This is the last question. I just wanted to go back to Ms Sandals's discussion that she had with you about the local boards' ability to create their own courses to fit the local needs, just so I'm clear. As it exists now, a local board can create three courses only that are credit courses, but there doesn't seem to be the bridge to get them to the grade 11—I'm forgetting the language.

**Ms Wright:** Workplace courses.

**Mr Mauro:** Workplace courses. That's accurate?

**Ms Rankin:** The boards have the ability to create three compulsory courses, so students need a math and an English and a science in grade 9, and then they need to take it again in grade 10, for the most part. The board can offer either the grade 9 or the grade 10 as the compulsory, develop their own locally developed compulsory, but it's the other year that's the problem. Most school boards do this in grade 9. They'll give the compulsory essential course, as they call it, the locally developed course, in English, math and science.

**Mr Mauro:** They're generally more at what we used to call a basic level, are they?

**Ms Rankin:** That might not be a bad comparison to make. It was developed with the intent that it would serve the needs of students who were several grades behind.

**Mr Mauro:** So the kids who are going to choose to take those courses are taking them because they would feel challenged by the other courses that exist in the curriculum.

**Ms Rankin:** Kids whose parents choose to place them in those courses are taking them because they feel that's their best chance for success starting off at high school.

**Mr Mauro:** Early on, but then the gap still exists, because eventually they have to take those applied.

**Ms Rankin:** That's correct. In grade 10, boards can offer locally developed courses in English, math and science as optional credits, but there are still some

requirements about how many compulsory credits have to be taken.

**Mr Mauro:** When was the decision made to allow boards to create these courses that we're talking about?

**Ms Rankin:** That's part of our Ontario secondary school policy, which was published in 1998.

**Mr Mauro:** So it came in at the same time as the new curriculum?

**Ms Rankin:** It predated the actual release of the secondary curriculum by a little while, by six months or so.

**Mr Mauro:** But was it created because the new curriculum was coming? Was there a recognition that there were going to be some challenges under the curriculum, and so we thought this was going to be a mechanism that would maybe help make the transition a little smoother for the kids?

**Ms Rankin:** That's my best understanding, that it was intended to help with the transition for students who were struggling in their elementary program.

**Mr Mauro:** So there was a recognition of the difficulty of the new curriculum. We tried to address it, except we still leave that gap. We need to be able to bridge them from those courses to the workplace courses and/or the applied, should they advance through them.

**Ms Rankin:** Yes.

**Mr Mauro:** OK. That is something that I think you indicated earlier is being reviewed, in terms of increasing those courses from three credits to six credits. Is that correct?

**Ms Rankin:** The O'Connor report—this was the report on students at risk, released last winter—indicated that there should be five compulsory credits instead of three credits, and King makes reference to six.

**Mr Mauro:** The report indicated that. What is your ministry doing with that report? Do you have any direction based on that report to go forward with those recommendations or to review those recommendations?

**Ms Wright:** We've been reviewing all of the recommendations of that report. Actually, the vast majority of them have been implemented. On this specific topic, we're in discussion with the minister about it.

**Mr Mauro:** OK. Thank you, Mr Chair.

**The Chair:** I have Ms Broten and Mr Zimmer.

**Ms Broten:** I want to talk for a few minutes about outcomes and research. I guess that's been a common theme that we've analyzed over the last two weeks here at public accounts—measuring our outcomes, where do we want to be, and making sure that we base our decisions as a government on information that is valid.

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I guess I was startled that, of all the sectors, in a sector that is based on report cards and measuring results for the students themselves, we have not historically done a very good job in determining and setting outcome-oriented measures for the work of the ministry and basing ministry decisions on research. In the auditor's report, he's certainly critical of the lack of outcome-oriented measures for the effectiveness of elementary and secondary

education and the lack of research to support decision-making. A lot of decisions have been made over the last number of years about how we would alter and remedy, perhaps, the former government, to move in a direction in the education system.

My questions are: On what was that based? Since there is a criticism of not having research available to make decisions, what was the decision based on? How did you have sufficient information to make those? How could you know where you wanted to go if there were no outcome-oriented measures in place? And how can we measure our success and ensure that we're not back at this table again talking about these very same issues four, six, eight or 10 years from now?

**Ms Wright:** An excellent question. It is a bit amazing, the lack of outcome measures that exist in education. I think we all share some commitment to wanting to improve that and to identify what we think, over next couple of years or over the short term, with the education sector, the most important outcome measure should be. Is it the dropout rate, which is what Grant Clarke was referring to in his time here, or do we want to look at graduation rates? What are the other outcomes that we actually want to measure?

At this point, the primary outcome measurement is the standardized testing in 3, 6, 9 and 10. Our ability to work with schools and school boards to mine that data so it can tell us as much as it can about what kids are learning has actually been the priority of what we've been trying to work on.

In terms of the basis on which decisions were made, given the lack of substantive outcome data, I would say that in general terms, especially around the development of the curriculum, those decisions were made because the curriculum was based on and developed by Ontario teachers and for Ontario teachers. So it was very much reflective of their professional judgment about what the curriculum should and shouldn't contain. In that sense, the expertise we call upon is the expertise in the sector, with a longer-term commitment to meet the requirement that you're talking about to have better measures. As the deputy indicated, we did contract the King report, which was our attempt to start to move more drastically in that direction.

**Ms Broten:** I know that the King report has been through many iterations and we've had this information for a period of time, so what measures have been put in place in response, even if it's on an interim basis? Because the problem with the education system is that all along, while we're waiting to find the ultimate result and know exactly which place to go, we're leaving kids behind in the school system.

**Ms Wright:** I think it's fair to say that the King report has informed the recommendations of the working group on students at risk and has informed the recommendations of the expert panels that we have put together and that the sector has used to advise on what it thinks the recommended actions should be to address the students who are at risk.

**Ms Broten:** Two questions arose from your last answer. Does the EQAO analyze results to figure out how to improve who is at risk etc? Is that analysis undertaken? Because if the EQAO is our way of testing, two questions arise: How do we determine success in grades that don't have a test and how do we analyze those results to make sure they provide us with useful information to solve the problems in the system that need to be solved?

**Ms Wright:** As part of the standardized testing in EQAO, they do ask schools and schools boards to do improvement plans on an annual basis. In those school-based and board-based improvement plans, having looked at that data and analyzed it themselves, boards and schools identify what strategies they think they need to put in place. All of the school and board improvement plans are posted, I think, on EQAO's Web site or on our Web site, so they are also accessible. That's the main mechanism for taking that data and integrating it into the way schools teach and are organized.

**Ms Broten:** This is my last question. In my own community I have a real diversity in terms of over-performing schools, underperforming schools, and I wonder what the ministry's plans are in regard to assisting those underperforming schools in our communities.

**Ms Wright:** We have an existing program, which is smallish, called turnaround schools. That existing program is to provide assistance to, as I mentioned earlier, schools that are low-performing. I think it would be important to look at whether there is an opportunity to extend that program to more schools.

**Ms Herbert:** There is a program that we're looking at right now that looks at twinning high-performing schools with low-performing schools. I know it's something that our minister is really interested in. When you have a diversity in performance and where you can statistically look at those schools as being comparable, is there a way those schools can learn from each other? It's been that kind of twinning of schools and learning from each other that builds on the model that Kit talked about, about having teachers be communities of learners. Can we have schools be communities of learners? It's been done in several places in the States, with quite some success, and in Britain as well. I think some of the research that's been done by Michael Fullan and by OISE would say that there's some real opportunity in Ontario for us to look at how we might twin schools and have them learn from each other as well. We haven't put them in place, but there are some other initiatives, I think, that we can support schools and school boards to be doing that should assist in that.

**Ms Broten:** I've heard it described as a lighthouse school. Is that what you're talking about?

**Ms Herbert:** Right. That's another model.

**Ms Broten:** Are we moving to a model in that direction?

**Ms Herbert:** The minister has asked us to look at that program and what it would take to—

**Mr Marchese:** What about cost differences, Laurel? How does it solve that?

**Ms Broten:** I think those questions were answered earlier. So, given that I'm concerned about the time—

**Mr Marchese:** No, they weren't.

**Ms Broten:** Mr Marchese's point is valid. If I look in my own community, the school that's doing well has parents who are able to work in those schools and participate, and the other one doesn't.

**Ms Herbert:** The community mobilization around schools is absolutely key.

**Mr Zimmer:** Very briefly, on page 140 of the auditor's report, under "Research to Support Decision-making," let me read the first sentence. "In addition to its impact on improvement planning processes, the lack of sufficient, comparable student performance data and suitable computer support systems to capture and analyze contextual data also limits the ability of the ministry and school boards to conduct the research necessary to address critical issues in curriculum delivery and to provide the basis for informed decision-making."

We've heard a lot over the last two and a half weeks about the horrendous difficulties some of the ministries are having managing their IT. It seems to me you have a whole lot of information floating out there. It needs to be analyzed if you are going to get the decision right. How are your computer information systems? Are they as bad as some of the ones that we've heard about in the last few days? What sort of budget do you have for it? In your view, is your information technology budget adequate? What are the shortfalls, what are the problems? Then I have two other follow-up questions.

**Ms Herbert:** I'm looking at the Provincial Auditor, because he knows that deputies always welcome a question like this, a chance to go on the record about their infrastructure needs.

**Mr Zimmer:** For the record, that was not a given question.

**Mr Marchese:** It's not about money, Jim. Tell them.

*Interjections.*

**Mr Zimmer:** Hold on. I want to hear the answer here.

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**Ms Herbert:** The ministry is working off an old legacy system right now. I think we would all agree, and so would the school boards, that it's inadequate. The previous government was funding us to put a new data warehouse in place that would actually revamp our entire internal system and, as well, the school board systems, the way they have to report their data to us, and to link us to the EQAO database, which is another issue that we've had: our inability to take the information from EQAO and match it to individual students through the use of a student education number.

We are moving fairly quickly. That project is about three years old; we hope in the next two years for it to be up and running. That may be optimistic on my part and will to some degree be dependent on the future resources

we have to implement the system, whether it takes us two years or three or four years.

The significant backbone of the system is in place and that was the rolling out of the Ontario educational number this fall. That was a very significant achievement, not just on the ministry's part but on the school boards' part, because they had to input all of that data into the new system. So we are moving. The speed with which we move will be somewhat dependent upon the resources that are available to us.

*Interjection.*

**Ms Herbert:** Yes, that's very true.

**Mr Zimmer:** How's the budget for that sort of information technology? Is a part of it with local boards and a part with you? What's the split and what are the difficulties?

**Ms Herbert:** I couldn't off the top of my head give you a sense of what the overall budget on IT is in the boards. In my own budget, I have project funding that amounts to about \$6 million to \$8 million to implement this.

**Mr Zimmer:** My concern is, and what I'm worried about here is, we've heard about the critical importance of getting this information together so you can solve these delivery programs so we don't lose a generation of students. You can lose a generation of students in three or four years; they've gone from age 14 or 15 to 18 and we've lost them. What kind of time frames can we reasonably expect to get your systems up and running so you can get the information, and what kind of priority are you giving to shortening the time frame so we don't lose a generation of students?

**Ms Herbert:** The biggest priority we have right now is to match the Ontario educational number with the EQAO results data, which tells us how children are performing, and our credit accumulation data, which is what allows us to say—and Dr King used the existing data we had, with some manipulation—how many credits kids are accumulating in what grade, which is the biggest indicator of how they are doing in the high school system. So that's our big priority right now, to get our achievement data—just to go back to the question of metrics and measuring—together with our Ontario educational number. Then we'll be able to track by board, by school, how children are doing—not by name. This is all, of course, privileged information.

That's our biggest priority and we hope to have that done next year. There's a much bigger part of the information system which will allow us to go deeper into information for policy purposes, but right now our priority is on tying the student achievement data together.

**Mr Zimmer:** Do you have the budget to help you meet that priority?

**Ms Herbert:** If you're asking would I like more money, yes, of course. But the money that has been available to me thus far and which we'll be asking for as part of our budget process for next year would allow us to move substantial amounts of this forward in the next two years.

**Mr Zimmer:** It would be a shame to lose a generation of students because you can't get the data in a manageable form.

**The Chair:** Mrs Munro, do you have a short, one-part question?

**Mrs Munro:** Yes, a one-part question. It goes back to the question that was raised by Mrs Sandals some time back in the rotation with regard to the late assignment issue. I wanted to just clarify the response that was given to us. In the effort on the new report card, there was the idea of separating the actual demonstrations of skills, of content, whatever, of the student as opposed to: Was the assignment on time? Does the person operate in an effective way? Am I correct that your answer was to demonstrate that there were two issues here that you were trying to capture in the report card?

**Ms Rankin:** What I was trying to explain, and I think that's what I'm hearing from you, is that the learning skills, the kinds of behaviours that students exhibit, were separated from the actual achievement of the curriculum.

**Mrs Munro:** If that is the case, then it seems to me, because I ran into the same kind of questions being asked

by teachers and parents, that was translated to individual schools in a somewhat fuzzy manner. I had people telling me that in one school they were not allowed to deduct late marks on assignments, but in the same board, there could be. I guess what I'm asking you is, should we as a group here, as a committee, be making a recommendation that this gets communicated in a more clear manner for people?

**Ms Rankin:** I think you're making the point that our assessment policy around the deduction of marks for lateness needs clarification. I can certainly see that there are things we could do to facilitate that.

**The Chair:** I'd like to thank you, Deputy, and all of your people for coming today. I'm sure we could have all asked another four hours of questions or whatever, because there's always a great deal of interest in this subject. I ask you to follow up in writing with any of the requests that we've made to you, or if there's any clarification you'd like to make in writing, please do so.

For other members of the committee, we'll be meeting for a few minutes after.

*The committee continued in closed session at 1512.*

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First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 24 February 2004

# Journal des débats (Hansard)

Mardi 24 février 2004

## Standing committee on public accounts

2003 Annual Report,  
Provincial Auditor:  
Ministry of the Environment

## Comité permanent des comptes publics

Rapport annuel 2003  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Tuesday 24 February 2004

Mardi 24 février 2004

*The committee met at 1045 in committee room 1, following a closed session.*

2003 ANNUAL REPORT,  
PROVINCIAL AUDITOR  
MINISTRY OF THE ENVIRONMENT

Consideration of section 3.08, Environet.

**The Chair (Mr Norman W. Sterling):** Good morning, Ms West. Welcome to the committee. The microphones will go on automatically by the Hansard reporter. You can shut them off by pushing the button. It's normal for our committee to ask for some opening remarks, and then we allow the committee to ask questions. There are usually enough questions to keep us going until noon time, and then we adjourn until 1 o'clock. Then we come back and normally aim at 3 o'clock for a total adjournment. It has been earlier some days, or slightly later, but that's normally the day as we see it.

I invite you to make some opening remarks.

**Ms Virginia West:** Thank you, Mr Chair. I believe the remarks are also being passed around to you, as I speak.

Thank you for this opportunity to discuss the Ontario Provincial Auditor's report on the Ministry of the Environment's Environet strategy.

The Ministry of the Environment is strongly committed to its mandate to restore, protect and enhance the environment. We welcome the valuable comments provided by the Provincial Auditor in his 2003 annual report.

The ministry agrees that access to accurate, useful and timely information allows for better decision-making to occur. We are pleased to report that improvements continue to be made to our Environet systems. When fully developed, they will increase the speed and access to accurate and current information needed to make important management and operational decisions. We also acknowledge that there is still much work to do to make further progress on a number of the procedural and system shortcomings that have been identified.

Following this summary of the actions we've taken, my staff and I will be pleased to answer any questions that you may have. Several members of the ministry's senior management team are present, including: Joan Andrew, our assistant deputy minister for the integrated environmental planning division, who is sitting here with

me at the table; Allan Gunn, assistant deputy minister, corporate management division; Jim Smith, assistant deputy minister, drinking water management division, a new division created last summer and built through the fall, so it's now well established, and he also carries the title of Ontario's chief drinking water inspector; Michael Williams, assistant deputy minister, operations division; and John Lynch, acting ADM for the environmental sciences and standards division.

I'd now like to look at the auditor's findings and how the ministry is responding to them. First, I will discuss the drinking water information system, or DWIS, a data acquisition and information management tool which supports the compliance side of our comprehensive drinking water program. When the audit was conducted, DWIS had not been fully developed for all of the requirements of our water protection regulations. Consequently, the Provincial Auditor's report was based on our previous business processes. The auditor found that, while significant components of DWIS had been implemented, the system was not complete. The current version of DWIS was released less than two months after the audit, in May 2003. I should also note at this point that we have improved, and are continuing to improve, DWIS, adding new analytical and report-generating capabilities to assist us with our compliance efforts.

A number of our reporting functions identified by the auditor have now been implemented, and others are currently under development. A new updated version of DWIS, called EDWIS, or enhanced drinking water information system, will be released in the summer of this year to support the requirements of regulation 170. I will speak briefly to some of its new features shortly.

The auditor found that the ministry had not completed the registration of all smaller drinking water systems. Since the audit, we have updated our profiles for existing systems and continue to enter new profiles as systems register with us. We are also developing a multifaceted compliance strategy to ensure that the small, non-municipal drinking water systems are aware of their regulatory responsibilities to test drinking water samples and submit results to the ministry.

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Our strategy includes active outreach. For example, during the summer of 2003 we sent out information packages across the province to inform the community of our regulatory requirements. We've also developed a kit

for regulated non-municipal drinking water system owners which provides that regulated community with detailed guidance on how to implement our requirements at their drinking water system.

We are actively following up on any drinking water systems that we have reason to believe should be following our regulatory requirements and are not registered in DWIS. This includes telephone contacts and letters, and we will issue orders and take enforcement action when necessary.

The auditor also found that some records in the DWIS database were inaccurate. We have implemented quality control procedures on drinking water system information to resolve discrepancies or obtain missing data. We also check the profile information for systems that are manually entered into DWIS and follow up with owners and operators to verify the information.

The enhanced DWIS system will allow for further improvements to data accuracy and crosschecks in the maintenance of drinking water system profiles. For example, enhanced DWIS will have smart forms capability to facilitate on-line registration. The smart forms will have a built-in capacity to conduct primary validation of data. For example, drinking water systems owners registering for the first time will be asked a series of questions to determine which category of drinking water system their system falls under according to regulation 170. The smart form will customize the rest of the registration based on that category. Additional features will include help functions, pick lists, auto populated fields and field verification. This will enable the submission of accurate information from users.

The auditor expressed a concern that DWIS is not fully integrated with our inspection work. He said we need to explore ways to use DWIS and its data to generate reports to identify and prioritize inspection candidates and to summarize compliance. We will bring in new tools that will analyze the data and support the development of protocols for inspecting higher-risk systems. That is why the ministry has established as part of the new drinking water management division an assessment and evaluation section to monitor compliance trends and issues and identify priority areas for inspection.

With respect to the submission of water quality test results and minimum sampling requirements, the Provincial Auditor found that DWIS was unable to identify whether all drinking water systems were submitting their test results or the minimum required number of microbiological samples.

DWIS now addresses the problem of drinking water systems that failed to submit any test results. In addition, enhanced DWIS will generate reports on systems that fail to submit the minimum number of samples required, including those for microbiological parameters. The ministry continues its follow-up action for the specific drinking water systems identified by the auditor in his analysis.

The Provincial Auditor also recommended improvements to adverse water quality incident monitoring and

tracking procedures. The ministry takes all adverse water quality incidents very seriously and has systems in place to respond. Where a high-risk problem has been identified, the ministry responds with immediate on-site inspectors who undertake the appropriate response. The ministry has implemented detailed written procedures for handling calls involving adverse water quality incidents.

We have made enhancements to DWIS and the integrated divisional system that allow for better monitoring and tracking of adverse water quality incidents. Further improvements are also being made to enable the ministry to track incident resolution through enhanced DWIS. We also now have a reporting tool that allows us to match adverse water quality incident notifications that have been reported to our Spills Action Centre to the testing data that is subsequently uploaded to DWIS by the laboratory.

The ministry has also addressed another concern of the auditor related to AWQIs and exceedances, in particular, the auditor's concern that DWIS reports did not distinguish between raw and treated water exceedances separately. DWIS does now effectively distinguish between these types of exceedances. In addition, we have implemented a mandatory chain-of-custody process and form that enhances quality control for submitted data. Our mandatory inspection program confirms that these are being used.

A further concern of the auditor, that DWIS was not always updated when amended regulatory water standards came into effect, has been addressed. The existing DWIS has been updated with all the corresponding standards required for monitoring and compliance. A new business process has been put in place to ensure that all new substance concentration limit standards will be entered into DWIS in time to ensure that tests are not assessed against old standards.

DWIS is an integral part of our regime to protect drinking water and we are continuing to improve upon it. If you have other questions in this area, you may address them to Jim Smith, who heads up the drinking water management division and is Ontario's chief drinking water inspector.

I'd now like to turn to the issue of the ability of our Environet systems to support our efforts to track hazardous waste movements within Ontario.

The auditor found that the HWIN, the hazardous waste information network, does not support paper submissions, resulting in minimal use by the regulated community. Less than 1% of manifests were processed through HWIN. We have developed an outreach strategy and it is now being implemented. Ongoing improvements are being made in the capability of HWIN to handle paper manifests. We are also developing a supplemental training package about the HWIN systems for users.

The HWIN program is constantly being examined for opportunities to increase efficiency. In that process, we'll be looking at incentives to promote the adoption of electronic manifests.

The Provincial Auditor also stated that HWIN had few analysis and reporting capabilities. This was true when

HWIN was being implemented. However, it has the capacity to provide any number of reporting and analysis capabilities as required by clients. We have been working with our regional clients to fine-tune those capabilities and will continue to do so. The ministry has addressed this issue. Additional analytical and reporting tools have been added to HWIN since the audit.

Another finding of the auditor is that the majority of generators had failed to register on time and the ministry did not follow up. He also indicated that the system flagged a number of unauthorized waste movements that were not followed up. We have responded to these concerns by sending out reminders on three occasions to generators that have not registered. The annual registration of facilities began in January for this calendar year. Registration status is now checked routinely as part of routine inspections, and inspections by our environmental SWAT team. We will develop plans to follow up on delinquent registrants as part of the compliance strategy for regulation 347.

The auditor also found that carriers and receivers were also moving waste they were not authorized to handle. The ministry has undertaken proactive inspections. To deal with specific compliance issues, the environmental SWAT team has implemented a targeted strategy over the past 18 months. SWAT has conducted widespread inspection sweeps of hazardous waste transfer and processing facilities. The SWAT team has conducted inspections of numerous carriers to verify manifests. We have also developed a comprehensive and integrated monitoring program for investigating waste movement by unregistered generators.

The third area I am going to address is the auditor's findings on our OnAir application. OnAir is designed to provide easy access to air emissions data reported by facilities under regulation 127/01. The auditor found that the ministry did not have a complete inventory of facilities that should have been reporting emissions at the time of the audit. I would point out here that the purpose of regulation 127/01 is to facilitate public access to the annual emissions from industrial, commercial and municipal sources. As with other regulations under the Environmental Protection Act, the onus is on facilities to comply with the regulation and report their emissions.

Strategies are in place to help identify facilities that should be reporting under regulation 127/01. We have outreach initiatives to raise awareness of reporting requirements. We do ongoing strategic inspections to determine if facilities are meeting reporting requirements. Environment Canada's national pollutant release inventory list is also used to identify potential candidates for inspections. We will also crosscheck the OnAir registry with environmental assessment and approvals branch's database regarding certificates of approval to create a list of potential facilities for reporting under regulation 127.

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Another finding was that no further follow-up or verification work is conducted when facilities are notified of questionable data. Under regulation 127/01, reporting

facility owners are responsible for the accuracy of their reported emission data. These reports must be signed by senior facility officials. We will be reviewing reports submitted to OnAir as part of quality assurance quality control procedures.

Development of the non-compliance module of OnAir, an important tool to support the ministry's strategies, is well underway and will be operational in June 2004.

The auditor found that many facilities did not submit their information within the time frames required by regulation. Outreach strategies are in place to raise awareness of the regulation and reporting requirements, including the due date of submissions. Along with Environment Canada and other partners, we have hosted workshops and reporting training sessions for representatives of 2,000 facilities.

The ministry keeps track of facilities that do not submit on time. Approximately 700 of the 3,900 facilities did not submit their reports on time for reporting year 2002. The ministry follows up with these facilities by sending compliance letters to remind them of their obligations. We take appropriate follow-up actions on repeat offenders.

The auditor found that minimal analysis had been done on the data collected by the OnAir system to help the government develop future environmental policy. We recognize that minimal analysis has been done, but this is only the first year that the ministry is obtaining a complete suite of reported emission data. No trends are available. Emissions information now has been used in policy development and will be used in the annual Air Quality in Ontario reports.

The final area I am going to address is inspections and information management systems. In his report, the auditor stated that the new policy of annually inspecting all municipal drinking water systems has affected the ministry's ability to cover other sectors. He said that even with SWAT, overall inspection activity has decreased.

I want to point out here that our focus with inspections is changing from the number of inspections to mitigating environmental risk through inspections. The SWAT team targets high-risk companies and sectors, using comprehensive inspections that may take anywhere from one hour to five days, depending on industry and company complexity. District offices conduct comprehensive inspections of facilities by geographical region. They use stringent methods to ensure compliance, including provincial officer orders.

The two approaches, involving the environmental SWAT team and district offices, are complementary. They enable us to identify sector-wide trends while maintaining a regional, community-based presence.

The ministry has also implemented the annual inspection of 100% of municipal water treatment systems that serve over 80% of the population of Ontario. The auditor pointed out that 37 of 231 inspectors were assigned to central region, where five million Ontarians reside. He also said there was no formal analysis to support the

allocation of inspectors by region. Our distribution of resources is based on other factors, of which population is only one. Other factors include size and complexity of the regulated community; environmental significance of the regulated community; geographical dispersion of facilities; and protection of urban versus natural areas. In addition, 30 SWAT inspectors form an important element of our overall inspection capacity and specifically complement district inspection staff by undertaking strategic, sector-based inspections.

The last finding I will address is the inability of inspectors to access the most accurate, complete and timely information, especially compliance history. The ministry uses reports and information generated from across all program areas and databases to set its work planning and priority-setting activities, as well as to ensure that inspectors have the information they need to perform their duties. The integrated divisional system has been developed to provide an integrated approach to regional-district information management.

The ministry also plans to implement the laboratory and waterworks inspection system project. We will integrate the latest Environet systems with IDS to better manage information and environmental risks. The system will apply to all inspections and help manage risks. This strategy will involve redesigning current inspection approaches. We will use new tools, including diagnostics testing, outreach and incentives for the regulated community. Our operations division plans to evaluate the IT systems to identify the next Environet-compatible base systems.

Again, I want to thank the members of the standing committee on public accounts for the opportunity to address the Provincial Auditor's report on our Environet systems. We are taking actions to meet the recommendations contained in the report, but we also recognize that there is much work ahead of us still. We are determined to get the job done because it will improve our ability to deliver on the ministry's mandate to protect human health and the environment.

Mr Chair, those are my opening remarks. I'm pleased to answer any questions with the assistance of staff here.

**The Chair:** Thank you very much. Ms Sandals.

**Mrs Liz Sandals (Guelph-Wellington):** I'd like to begin by looking at the whole area of drinking water quality and tracking that. Certainly, as we talk to the public, that's been a really high level of concern, obviously, around the whole issue of drinking water quality and how we manage that. As I read through the auditor's report, if I can capture this, it struck me that we seem to have had historically a number of silos of data which might or might not be accurate and might or might not be complete, and not necessarily the linkages between that data to enable the inspectors actually to find problems. It seems to me that if you're going to have an information system, the purpose is ultimately not just to have a whole lot of data; the purpose of the data is to allow you to focus on finding problems and correcting problems.

The auditor talks about incomplete data and incomplete data not being flagged. He talks about data

being not cross-referenced, so he mentions that "the system did not have sufficient edit controls to reject obvious conflicting test results...." He talks about, on a number of occasions, I think, some problems in terms of the interaction between the drinking water information system and the adverse water quality area, and says, for example, that the drinking water information system "reports did not distinguish" adverse water quality "from other exceedances." Presumably that's critical, because it's with the adverse water quality that you need to be right on that case immediately.

Generally the theme runs through this of just a general lack of exception reporting, so that when something is missing or an exceedance or something has gone awry, there's been a general lack of exception reporting, which would tell you when to trigger inspections or compliance follow-ups or whatever.

So I guess the question would be, why was it designed that way in the first place? As I say, my observation would be that if you're going to have all this information, the purpose of the information is to find the exceptions. So why was it ever designed that way in the first place? Can you give some assurance and give us a sense of how some of the improvements that you've talked about are going to fit together, so that we can be sure that we go from raw information to actually being able to track problems and make sure that we concentrate on risk?

**Ms West:** Thank you very much for the question. I touched a little bit on this in my opening remarks, but I know that Jim Smith will be able to elaborate, and hopefully provide you with that assurance.

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**Mr Jim Smith:** Good morning. It's a pleasure to be here. As the deputy has introduced me, I am Ontario's new chief drinking water inspector. I'm also the ADM of the new drinking water management division.

I wanted to preface my comments by saying I certainly read the auditor's report and took all the recommendations and findings very seriously. For a new division, I'm focusing on ensuring that Ontario's delivery system for drinking water does provide safety and assurances to the public.

In terms of the specific questions, in the opening remarks we identified that at the time of the audit we hadn't brought DWIS on line. Two months later, in May, the ministry did introduce it and brought it into production. What I wanted to talk about was a few of the concerns that were raised. They were around integration, quality control, and also some specifics around our exceedances and the adverse water quality incidents that the auditor had assessed.

In terms of the first question, for integration, certainly our overall vision is to have our data integrated on drinking water so that we and others, including the public, can be informed and make good decisions. We are on the road toward that. Justice O'Connor's recommendations also focused on that aspect of data and data integration.

In terms of the drinking water information system, it provides a system where analytical data and test data—at

this point in time, as of December, 2,797 systems in the province have registered with us, and analytical test results are being uploaded into the information system in quite a comprehensive way.

We also have made significant improvements since the time of the audit in terms of having our systems interact with each other.

A very important system to the ministry is one where we follow up and plan our work, and that's the integrated division system. That system now communicates with the drinking water information system, so that's a real milestone for us.

As the deputy indicated, we have a very comprehensive inspection program in the province for both municipal treatment systems and laboratories across the province. We're developing a system for the summer that will take all of our inspection findings and also have those in a database that we'll communicate with.

In terms of quality control, that's certainly a very important aspect. If I can take one example, the auditor had identified issues around distinguishing raw water samples from treated water samples. That's a very important area to distinguish. We've introduced, through regulation and now in practice, a chain-of-custody form and process which ensures that drinking water systems are very clear and specific about the types and locations of drinking water samples they must take, and those are entered into their registration profile.

The laboratories would also have that profile. As samples are submitted, they must be matched, and the system will not accept mismatched samples to where they were to be taken. That's an important feature now to help the drinking water systems laboratories differentiate and make sure that well water and treated water don't get mixed up or confused.

In terms of the adverse water quality incidents, that's an area we have put a lot of priority on. What's extremely important is that laboratories and owners notify us immediately when they analyze or find out that they have an adverse water quality exceedance. That information is provided to our 24/7 Spills Action Centre and they enter that information into the drinking water information system. There are a number of system screens and help functions that make sure that information, when it's entered, is properly controlled. That information is now subsequently downloaded to our workflow IDS information system that I spoke about earlier so that there is an action out in terms of those findings.

In terms of that process as well, what I would like to indicate is that we actively track all AWQIs, because they are important. We also follow up in terms of our field response for those adverse water quality incidents that require that attention.

I know I've said a fair amount and I hope that helps answer some of your questions.

**Mrs Sandals:** Thank you very much. You've obviously done a lot of work recently on what were some pretty obvious flaws in the original system. If you haven't got that flow from initial reporting to actually

doing something with the information, it's just a make-work project. It seems to me from what you're telling us that you're now getting a system that will enable you to use that information more effectively. The deputy mentioned that you were generally targeting inspections more toward risk assessment. How will all this information help you to focus on high-risk areas as opposed to some more random form? I understand you have to do all municipalities, but in the non-municipal, how will that help you track the high risk?

**Mr Smith:** As I indicated, one of our primary areas of follow-up is when an adverse water quality incident is notified to the ministry. At that point there are communications with the owner, the operator, the local health unit, the local medical officer of health and our own staff. We have policies in place in terms of the type of response actions we take. In addition, the regulation is quite specific and prescriptive about the actions that need to be taken by the drinking water system operators.

For matters that are of higher risk, such as microbiological reporting, we follow up with a field response for the municipal systems and for the non-municipal as well. We consult with the local health unit to determine the severity of the finding and then we have the appropriate field response.

What we are also doing—and I'm really pleased about this—is that my new division became operational on January 26 of this year. I think that is a significant milestone for us. We have a branch and a section that are dedicated to the analysis and assessment of drinking water information. With DWIS in hand and the millions of test results that are in that system since the ministry started collecting data, we are in a very good position to understand the issues the province is facing in terms of the non-municipal and the municipal.

Our hope and certainly our intention is to use that information to provide us with sufficient understanding and intelligence on where to focus our future efforts. Those efforts would range from compliance promotion—and the deputy pointed out we've done a fair amount there already for the non-municipal smaller systems. I really think the owners and operators will continue to benefit from an understanding of what the requirements are and what sort of problems other system owners are facing out there that we can advise them on. It will also be used to target future field follow-ups and inspection activities.

**Mrs Sandals:** Thank you.

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**Mr Jim Flaherty (Whitby-Ajax):** Thank you for this, this morning. It's certainly good to hear everything you said, because it assuages a lot of the concerns that were in the report. I have a few remaining concerns, really more matters of clarification, I think.

First of all, the overall audit conclusion by the auditor was that, "The ministry's Environet systems did not provide ministry staff with the information needed to support the ministry's responsibilities of ensuring that drinking water meets regulatory standards, that hazardous

waste movements are properly controlled, and that all air emissions are monitored and reported where required.”

Where are we on that now? Are you able to say now, Deputy, that the information systems do provide the information needed to support the ministry’s responsibilities?

**Ms West:** I think certainly the information systems are in a much better stage of being able to provide that support. Jim Smith has certainly related what has happened on the drinking water information system and supports that particular program area and concern of enforcement. Maybe I can ask Joan Andrew just to speak in summary form, I suppose, to both the hazardous waste information network as well as OnAir in terms of some progress that we’ve made there.

**Ms Joan Andrew:** Just to start with, while the Environet systems weren’t and in some cases still aren’t fully functional, we do maintain manual systems to ensure the protection of the environment and human health to support the Environet systems. I just want to make that clear: There are systems in place.

On hazardous waste information, we are doing significant outreach with the hazardous waste community—generators, carriers and receivers—to encourage them to use electronic manifesting. We’ve met with, in particular, the three biggest receiver companies that would allow us to get better tracking. I think the issue of how to move more people into electronic reporting will be the way that we have timely tracking of reports. We process about 2,000 movements of hazardous waste a week, and when they’re largely manual, that’s a time-consuming process.

With OnAir, we are doing significant outreach. The regulation was designed so that emitters were phased in by size. It was only in June of last year that the reports were required. This is after the allotted period of time for a large number of companies to report. So there were 3,900 companies, or emitters—I shouldn’t call them companies, because some of them are municipalities—that have reported as of this year.

On OnAir, we’ve done over 60 outreach sessions with industry organizations to help them outreach to their members, to help them understand their requirement to report. With the OnAir system, regulation 127 is a requirement to report what your emissions are. It’s not the system we use. We have other regulatory systems to limit air emissions, if I can say that. The regulation is about requiring that transparent reporting of emissions in the province.

**Mr Flaherty:** Dealing with some of the specifics, the auditor reported that “inspectors are not currently using the Environet systems to plan or prioritize their work.” I realize this is almost a year ago that the auditor made the report. Has that situation changed? I didn’t understand whether it had or not from your remarks.

**Ms West:** First of all, I think you realize, as we said, that we’re in the stages of improving the Environet system in its various forms and being better able to use it for various purposes. Again, Jim Smith spoke in terms of inspection activity related to drinking water and how that system is being used for those purposes.

With respect to the other components of Environet, yes, it’s being accessed and used for other purposes, including to identify where the high-risk areas are, to help identify those areas and to move on those from an inspection standpoint.

**Mr Flaherty:** Did the inspectors have the data? If you’re in northwestern Ontario, can you use the Environet system to plan or prioritize their work?

**Ms Andrew:** Sorry, I should have followed up on that earlier. Yes, it’s a Web-based system; they can use it. Just to use OnAir as an example for a minute, if I could, we have also received this past year resources for two engineers, who actually do an analysis of the data and are sharing that data more broadly with our operations division. So as of April of last year, we had staff who could analyze some of the data and then share—if I could say this—those that we think require follow-up inspections. For the end of this fiscal year, we’re targeting 200 inspections of the facilities to see about compliance with OnAir data. Michael Williams could tell you more details about the plans for the inspections.

On hazardous waste, over the last 18 months the SWAT team has been doing fairly broad inspections on hazardous waste, but we’re also targeting a more regional-based strategy.

**Mr Flaherty:** As of the auditor’s report, he reported that none—that is none—of the inspectors use the Environet applications or their data. So that would no longer be so, as I understand the responses that I’m hearing this morning. Now all of the inspectors would use the data or some would or a handful?

**Ms West:** Joan has given you a particular example, Mr Flaherty, and perhaps I can ask Michael Williams, who is the assistant deputy minister of the operations division, to speak to that as well.

**Mr Michael Williams:** Good morning. I’ll refer back to the question about an inspector in northwestern or southwestern or central Ontario and what they’re doing right now. I’m pleased to be able to say that in January 2003 we trained 1,000, all of the field staff, in using the integrated divisional system, IDS. We continue to work on making links with it into Environet, but now all of our inspectors, in planning their fieldwork, do have access to the database system that registers, for example, provincial officer orders, registers record of compliance with companies, the approvals. So, we’re now able to say that there is a system in place and all of the staff in the division are trained and able to access that data.

The link that isn’t there yet—which the deputy alluded to; we have a little way to go on that—is to make it fully Environet-compatible, and we are looking at ways to do that. One of the things the system doesn’t do that, for example, our SWAT program has right now is a system called CAMEO, the computer assisted mobile enforcement office. Where we really want to be is to have that CAMEO capability, which is Environet-compatible, right across the province. Currently, we use it in SWAT, but it’s basically a system that lets an inspector, anywhere where they’re doing their duties, call up the kind of

information they need on a facility, and it ultimately gets right through to actually pushing buttons, issuing tickets and orders right then and there. We have part of that capability in the division; we're going to work in the future to try to bring it to the rest of the staff.

**Mr Flaherty:** You mentioned SWAT. This is an aside, but on Saturday I had someone who runs a business complaining to me that the inspector from the SWAT team from the Ministry of the Environment showed up wearing a bulletproof vest. Do they wear bulletproof vests?

**Mr Williams:** Our SWAT staff have full uniforms, sir, and depending on the situation and the industries they are inspecting, a bulletproof vest or a flak jacket is part of that uniform. We have gone into a number of situations when we look at hazardous waste haulers, when we look at things like auto wrecking yards and the types of clientele that we're likely to encounter and some of the risks to the officers—yes, they do wear flak jackets going in to do some of those inspections. It is part of the uniform.

**Mr Flaherty:** Part of the uniform. That means they wear it normally?

**Mr Williams:** Excuse me; I'm just looking to my director of SWAT here.

**Mr Flaherty:** It's an aside, but people were concerned about it.

**Mr Williams:** Sorry about that; I just wanted to check with my director of SWAT. Yes, it's part of the uniform, and any government official who has a uniform is required to wear the uniform. Our SWAT officers wear that with respect to the uniform when they're out there inspecting.

**Mr Flaherty:** A family-owned business that has been in business for a long time has kind of a surprised reaction as good citizens when a government official shows up, who's not a police officer, wearing a flak jacket. It's not about the auditor's report. It was just raised with me on the weekend, and I thought it was kind of strange.

1130

**Mr Williams:** I'd like to respond to that, because I think we share your concern. There have been a number of occasions where folks have spoken to me about it or written to our ministry about it. I don't think there's any issue, going into the sort of midnight dumper arrangement, that the folks are appropriately attired. One of the things I can assure you, even though it's not part of the audit, is that I've asked the director of SWAT to look at when you pull the full uniform out of the locker and on what occasions you want to use that versus when you want to go in and take a look around a facility. I can appreciate how intimidating it is when you move into a company that may be in full regulatory compliance but you're at the front door with their administrative assistants and then call people in. I just want to assure you that we recognize that and we'll deal with that, sir.

**Mr Flaherty:** Back to the main subject, if I may, about inspections. In the auditor's report, he talks about a

1994 audit of water and sewage treatment facilities. The auditor at that time noted that the drinking water facilities with more significant compliance problems were mainly the smaller ones and recommended increased surveillance of them, which I suppose makes sense. First of all, factually, in terms of non-compliance and bad results, are we generally dealing with smaller facilities?

**Ms West:** We're talking about water facilities?

**Mr Flaherty:** I'm talking about water, because I was looking at page 212 of the auditor's report, the third paragraph.

**Ms West:** Jim, are you prepared to respond to that?

**Mr Flaherty:** What I'm getting at here—I'm not trying to be obtuse—is the risk-benefit analysis. In other words, what's the point of inspecting the new water plant in south Ajax if it's always in compliance, if it's state of the art? Shouldn't we be focusing our resources on the trouble, and can we identify the trouble?

**Ms West:** I will invite Jim to respond to that. I don't think I have to say it, but I will say that certainly in terms of the municipal water systems, we do have a 100% inspection protocol. I think that is important in order to guarantee to the 80% of the population of Ontario who rely on it that we do have that level of vigilance. So I think it is an important bar to start with.

**Mr Flaherty:** I'm not sure about that, actually. I'm not sure it is, because do taxpayers want that Ajax plant inspected every year? Is it necessary to inspect it every year if you're getting full compliance reporting from the regional municipality of Durham in a brand new plant?

**Ms West:** I'm not going to respond directly to that, but I will ask Jim to speak to how it fits within the broader regime. In some respects, we have a very robust regime now that we're putting in place, and a good part of it is in place, to assure the people of Ontario of the safety and security of the drinking water. I think that is important. There are a number of components to it. I think the question that we do have to pursue a little bit further as well is those areas of risk, maybe the non-municipal facilities in particular which don't have that current requirement for 100% annual inspection but that we do have to deal with in a risk-based way at the very least to be able to provide to the greatest extent we can further assurances on those facilities. Jim, maybe I can just ask you to elaborate further.

**Mr Smith:** In terms of the municipal and non-municipal systems, as I indicated earlier, we have just under 3,000 systems registered in the province. That registration process is about them meeting our regulatory requirements. Many of those systems would be non-municipal; many of those would be the small systems as well. In the province, we have what I always like to talk about as seven pillars that we use to ensure we have a comprehensive safety net, and that follows in line with where Justice O'Connor was placing his emphasis.

What I wanted to talk about were your concerns about the non-municipal, the smaller facilities, and what's happening. First, they need to test their water and report it to us and, second, notify us of any exceedances. So that

automatically provides us with information on those systems that are having some water quality issues if the notifications are coming in for those exceedances.

At that point we would follow up. As I indicated, there would be a dialogue between ourselves, the owner-operator and the local health unit, and if necessary there would be a field response, at which point we would better assess the situation. We can also make a determination whether an inspection would be needed in the future for that facility from what we see.

The other important part for those systems is that they have to have an engineering evaluation report. That report is undertaken by a professional engineer who has experience in drinking water systems and sanitary engineering to ensure that they are complying with our requirements and our treatment regime as prescribed for that type of system.

So there are certainly three examples of how the smaller systems, the non-municipal systems, are brought within the regulatory process and would ensure that, to the greatest extent possible, safe drinking water is being provided to their consumers.

**Mr Flaherty:** I appreciate that. What I'm trying to focus on, perhaps ineptly, is that government has limited resources, and the resources, to the extent possible, should be focused on the bad guys if there are problems out there in terms of water quality, for the sake of talking about water quality.

Are you able to analyze the data that you have; for example, the AWQI data on page 205 of the auditor's report? Are you able to analyze that and say, "OK, we should be focusing more of our efforts on this part of the water population that we deal with as opposed to this other part"? I'm assuming there is not a problem with the water system in the city of Toronto most of the time. I hope you're not spending a lot of time on it, or on the regional municipality of Durham or on the regional municipality of Peel and so on. Anyway, can you do that with the data that you have?

**Mr Smith:** I'll answer that question in two parts.

We are committed, as you understand, to 100% inspection of municipal drinking water treatment systems, and we have a very extensive protocol and extensive data collection on that. We have a number of years of experience. What I see is that over the next year or two we'll have significant capacity to analyze that information and make decisions around, "Can we focus the inspections for a municipal system that is performing well? Our inspections identify that they are meeting all our requirements and they consistently do that. Can we spend somewhat less time there in terms of our inspections?" That's the type of assessment we want to make to assure ourselves that that's something we can do.

For the non-municipal systems, we have a field response. We have policies in place where we focus our time on follow-ups to those facilities that are reporting AWQIs, adverse water quality incidents, particularly on the microbiological side. So we're focusing the resources to go after, or to follow up on, those facilities that are having difficulties with their water quality.

Over time, as we talked about the drinking water information system and, also importantly, about our laboratory and waterworks information system that's coming on-line, we will be able to make good decisions in terms of where to focus our efforts for follow-up.

**Ms West:** Maybe I can just add to that. With respect to the requirement to inspect 100% of municipal systems, that was a specific recommendation of Mr Justice O'Connor, so that's our starting-off point. But I do appreciate Jim's comments as well that as we get more practice at this and more information as a result of it, it will help us to better analyze what is required in the future for appropriate protection of water systems.

1140

**Mr Flaherty:** I won't be much longer, Chair. A couple of specific things: You mentioned in your remarks that you would address the problem of drinking water systems that fail to submit any test results. That was one of the major compliance points raised in the auditor's report as I read it. Do you have 100% compliance now in the submission of test results?

**Ms West:** Again, I'm going to ask Jim to speak to that, both with respect to the specific concern that the auditor raised, what we've done to deal with that and what we're doing to provide assurances more broadly on the submissions.

**Mr Smith:** In terms of the auditor's findings with respect to systems that didn't submit any test results or didn't meet the minimum requirements in their submissions, we have followed up, and we've followed up in two specific ways. One is that we have, since the drinking water information system came on-line in May of last year, a reporting capability that allows it to identify for us what systems are not submitting any test results. So that capability is present now.

In terms of systems that have not submitted the minimum number of sampling requirements, that's a function that we're developing, and that will be part of our enhanced drinking water information system that we're bringing on-line in the summer of this year.

**Mr Flaherty:** I'm sorry. I don't mean to be difficult, but how many are there? About 3,000 or so that are supposed to report?

**Mr Smith:** Right now, there are just under 3,000 systems that are reporting.

**Mr Flaherty:** The ADM mentioned you run a manual system.

**Mr Smith:** That's correct.

**Mr Flaherty:** Surely you're telling all of them that they must submit their samples; you're not waiting to develop a system to do this. And you're enforcing it, surely.

**Mr Smith:** What we've done is we've had outreach to that community to ensure that they understand the requirements. We've followed up on the facilities that have not submitted any test results, as identified by the auditor in his report. I can give you a progress report on that.

In terms of those systems, we actually followed up on 315, including the 300 identified by the auditor. Out of

those, 103 were no longer operating or were not subject to the regulatory requirements. They had registered but weren't required to submit test results. Of those systems, 123 have subsequently submitted data to DWIS during the period from the time of the audit to the present. We have contacted the remaining systems as well. Although they were sampling, they did not submit their data to the ministry and have now committed to doing that. We have a field response in terms of follow-up on eight remaining systems that's in progress. So that's the follow-up we've taken on those.

**Mr Flaherty:** I would hope that those you've had difficulty with on the compliance side are the ones you put at the top of the list on the inspection side.

**Mr Smith:** Yes, they're on a watch list in terms of ensuring that they continue with the regulatory responsibilities that they must meet.

**Mr Flaherty:** I'm almost finished with the major things I wanted to raise.

At the bottom of page 199 and the top of page 200 of the auditor's report, he deals with the number of inspections in absolute numbers. He says, at the bottom of page 199: "For example, last year inspectors visited only 54 of the 357 private drinking water treatment plants and 44 of the 1,119 smaller plants and designated facilities."

Why are those numbers so low? I mean, 54 and 44. We're talking 98 inspections in an entire year of private drinking water treatment plants and smaller plants and designated facilities.

**Mr Smith:** In terms of our drinking water program, there are two major types of responses we take for water systems in the province. One is our obligatory inspections. We carry out inspections, as we indicated earlier, for municipal drinking water treatment plants in the province on a yearly basis. Those systems serve over 80% of the population.

We also have a field response. A field response is when we are receiving adverse water quality incident reports, as I indicated. We will visit a system, be it a large or small municipal residential system, a non-municipal residential system, all systems serving a designated facility. We will do a field response and have an inspector follow up when there's an AWQI that involves E coli or fecal coliform. So we do follow up on those facilities. We consult with the local health unit in terms of follow-ups for other facilities. Those field responses don't get recorded as a formal, obligatory inspection.

I do want to highlight that for cases of microbiological contamination, we do have a field response. Our inspectors check out the facility. They also make a decision at that point as to whether that facility should be on our watch list and if it's a candidate for inspections. Again, as we indicated earlier, we make decisions around our mandatory inspections for municipal systems and for non-municipal systems, and there's a balance of those mandatory inspections.

**Mr Flaherty:** So a field response involves an attendance but is not recorded as an inspection?

**Mr Smith:** That's correct. In those numbers, what you are seeing is the formal inspections.

**Mr Flaherty:** My last question is about fraud, like the Walkerton situation, where someone is falsifying test results, as Mr Justice O'Connor found. What mechanisms, if any, are there in the system to try to assess whether fraud is taking place in the submission of water samples?

**Ms Andrew:** Perhaps I can start on this. We now require accreditation of all environmental laboratories that do drinking water testing. They are accredited by the Standards Council of Canada and audited by the Canadian Environmental Analytical—I've got it wrong; it's the environmental lab association, CAEAL. In addition to that, as of October this year we require that all laboratories doing drinking water testing be licensed in Ontario, and we have full inspection of drinking water laboratories.

As I think the deputy mentioned earlier, we have introduced what is known as a chain-of-custody form to ensure that the analysis that's taken at the drinking water treatment plant, sent to the laboratory and followed up with the results submitted to us can be tracked for the specific location it was taken and the specific parameters.

So we now have a fairly comprehensive system that requires that every drinking water treatment plant have a licensed and accredited laboratory. The laboratories are subject both to inspections by our staff for their licence requirements and to audits as to their professional proficiency by the audit component of the Standards Council of Canada. So there have been a number of changes. Also, the reporting requirements of laboratories to the ministry have changed since then. There has been substantial change.

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**The Chair:** Ms Churley.

**Ms Marilyn Churley (Toronto-Danforth):** Thank you, Chair. Do we break at noon?

**The Chair:** Yes.

**Ms Churley:** OK. I'll start by asking a question or two and come back later this afternoon.

There are a lot of questions, some of which have been answered or partially answered. I wanted to get back to the new system you're bringing in and the previous system. I'm trying to get a better understanding, in the meantime, before the new system is fully operational, of how you are handling the total inspection regime you have, trying to deal with both systems, because I assume you still are, and not just with hazardous waste but in water inspection as well. The new system is not fully operational yet, is it?

**Ms West:** If you're talking about drinking water—

**Ms Churley:** Yes, drinking water specifically.

**Ms West:** —then you're right. Jim will talk about it. He's noted that, yes, we continue to enhance the system and look for ways to make it even more robust. But there are specific plans currently underway that would have an enhanced system in place by June this year. Maybe Jim can remind us about what those specific improvements are.

In terms of the current system, DWIS, it is being used. I think some of the earlier references were that when DWIS was being established, it related to a different regulatory regime that was amended during that course, and now DWIS relates to the proper regulatory scheme.

**Ms Churley:** So is DWIS fully operational on the drinking water side?

**Mr Smith:** DWIS is operational. It has a range of report functions that it provides.

Just to follow up in terms of the earlier question, it's used around the province by our inspectors and our staff. I use it as well. I've queried the system; it has a number of report-generating capabilities. Some very important ones are the adverse water quality incident reconciliation process, where it can take the data entered by our Spills Action Centre, where we were notified, and then reconcile that with the laboratory data that would be sent to the ministry up to a number of weeks later and uploaded into DWIS and reconciled to make sure there are no exceptions. The system is operational. We are continuing to improve it. My view would be that the system will continue to evolve over time and provide us with enhanced capabilities to assess drinking water systems in the province.

In terms of the next production of DWIS, what we'll see is a seamless improvement. So the system is working well for us. Laboratories are uploading data. There's a lot of data being uploaded across the province. Come the summer, there will be a new production of DWIS. It will be seamless and provide for the smart forms the deputy spoke to. That's really about providing more control about data quality in the entry process that labs and drinking water facilities are entering into DWIS.

The other aspect will be new report functions for us, including the current regulation. The new regulation, 170, has some aspects that we want to build into the new DWIS in terms of differentiating categories of systems and allowing us to do some more analytical follow-up.

The system will also provide even greater ability to check for sampling submissions and frequency of samples. The rules we have for eight categories of drinking water facilities are quite comprehensive. It's our aim to provide even further capability to assess that in the new version. But it's really for us to be able to do that and for the community out there to even further quality check and control the data they are submitting to us. That's what the changes are about.

**Ms Churley:** What can't the system deal with at this point?

**Mr Smith:** In terms of follow-up, part of what it can't do was expressed earlier. For example, as we build Environet compatibility, it doesn't speak to all systems. I should mention that we're also developing, very importantly, our laboratory and waterworks inspection system. That will provide all the data from our inspections. We'll be able to communicate with the drinking water information system. For example, when inspectors do their inspections, they will also do audit samples of the water system. Those would be entered into our new drinking

water system for laboratories and waterworks, for the inspections, and that information and the information that DWIS has that has been uploaded from the system's laboratories can then be used by the inspector to compare results. That's a feature we can't do yet, and it will certainly enhance our ability to move forward.

**Ms Churley:** Does this have anything to do with moving forward with the Gibbons report? Is this any component of that report and those recommendations under the previous government?

**Ms West:** I think you see within the Ministry of the Environment these days the principles that Val Gibbons brought forward in the report. Certainly one of the principles—and it's consistent with what we heard from O'Connor and what we realize ourselves from our practice and our relations—is that the more data we have and the more transparent we make that data to all the players in the field, whether it's governments or the industry or the waterworks or the general public, the better able we all are to look after the concerns of the public, because it's very much an integrated, partnered responsibility. So I think in that respect as we talk about DWIS and we talk about the other components of the environment and the OnAir system that provides public access to very important emissions data, it aids in providing information to all people and players who have a responsibility in the environment field. I would say in that regard it is quite consistent with what the Managing the Environment report brought forward.

**Ms Churley:** Is the ministry proceeding in general with that report, or has that stopped?

**Ms West:** Again, as a matter of broad principle and with some specific suggestions and recommendations coming out of that, yes, the ministry has responded. We did have a particular organizational unit—

**Ms Churley:** I remember.

**Ms West:** —that dealt with that. Then what we've done over the past year is take those components from the organizational unit and try to imbed them into the establishment of the ministry itself. So, yes, as far as I'm concerned, we've tried to move that along and honour those particular principles.

**Ms Churley:** Just one last question before we break, veering into another area. Because the minister is not here, I'm trying to not make this a political question, but perhaps it is. It's following up on a question by Mr Flaherty, and that is why so few inspections have been done over the past year despite the new regulation.

Is there a need for more inspectors? I feel that that is and has been for some time part of the problem. I understand that in your capacity it's a difficult question to answer, but I put it in the context of reading the auditor's report and listening carefully to your remarks today. It seems to me today that the thought is that with this new system in place it will limit—on the one hand, it sounds like you're doing it to be more efficient, more with less and all that kind of thing, but you're still mandated to inspect 100% of municipal waterworks. It seems the thought is that this would make it more effici-

ent somehow, but it just seems to me that there is still a problem with not enough inspectors to do the job.

**Ms West:** Let me respond in somewhat general terms. Obviously, I think anyone in any situation where they're responsible for regulation and have responsibility for assuring compliance would say that you could never have enough inspectors or staff to do that.

**Ms Churley:** There's a threshold.

**Ms West:** And recognizing that there will always be some constraint, we do have to find ways to deal with the broader compliance concern. On the water side, we do know that as a matter of record there have been some substantial resources allocated to the ministry over the past year to help us deal with the new inspection needs for the water program.

Within another few weeks, we will have two years of practice in the proactive annual inspections for municipal waterworks, and it helps to inform in terms of our ability to do that and what resources are required to actually accomplish that. As Jim has noted, in terms of the other areas of waterworks, the non-municipal and the smaller ones, we recognize that we need to look at the resources we have and the manner in which we can provide better assurance and compliance in that area without having the specific regulatory requirement that we have the same level of annual inspections.

I think in some respects it's somewhat early to determine how effective the resources we have on the water side are yet. As I said, we do have just less than two years of experience with that. I think we're seeing some significant results, but we will be taking into account those results and our experience as we advise government under various processes, like our current budget decision-making process that's underway now.

**Ms Churley:** In terms of the number of inspectors—

**The Chair:** I'm going to ask you to ask the question after lunch. OK, thank you. One o'clock.

*The committee recessed from 1201 to 1306.*

**The Chair:** I guess we'll begin again. I had an interesting lunch with one of the mayors of a small town which I represent. I hesitate to give you the name, but he attended a session at ROMA yesterday with Dianne Saxe, who is perhaps one of the most renowned environmental lawyers in Ontario. She is the daughter of Mortie Shulman, who was a member of the Legislature in the 1970s and who has since passed away. One of the things she said, which we might want to keep in context today, was that the Ministry of the Environment is not the friend of municipalities. This is a lawyer speaking. She said to the group—and put it on a slide, which I hope to get a copy of—that these records which will be kept will be the bane of the municipalities because they will be used against them in terms of future lawsuits. The lawyers will have a field day with these records. So notwithstanding what we're trying to do today, that's the context of yesterday with regard to perhaps one of the most renowned environmental lawyers in the province of Ontario, how she is presenting this case to municipalities across the province of Ontario.

Marilyn?

**Ms Churley:** I presume you'd like me to ask a follow-up question on that, Mr Chair, since you—

**The Chair:** I was astounded that this was the case and it was in writing and that kind of thing.

**Ms Churley:** I've been asked if I would give a little of my time to have a correction made to the record from this morning, if that's OK with the rest of the committee.

**The Chair:** Sure.

**Ms West:** Mr Chair, at the lunch break, Joan realized that she misstated herself with respect to a reference to a number. I think it's inconsequential in the context, even in the one that you've presented to us, but just for the record, Joan?

**Ms Andrew:** Earlier today I was asked about the number of manifests we process for the hazardous waste information system, and I said 2,000 a week; it's 2,000 a day. Sorry. If the transcripts could reflect that. Thanks.

**Ms Churley:** Just coming back to—actually, before I come back to that, I promised I'd take this opportunity to ask you about the Boblo water situation. I think you know the background to that. I'm wondering if there's somebody here who can respond to their concerns about their water not being safe to drink and a slowdown within the Ministry of the Environment. Do people need a little bit of background on this?

**Ms West:** From our standpoint, we're just bringing someone in who can help us with that.

**Ms Churley:** OK. So I'll move on to other things here.

We talked a little bit about staffing. It's my view, based on the last several years of being here under the former government, and it was the Liberals' point of view at the time as well, that you needed a lot more resources to do your job. I received your answer, of course, and I thank you for that, but I still want to say for the record that from my information and observing what's been happening over the past several years, I would still submit that that is the case.

I want to thank the Legislative Assembly and Mr Ray McLellan, who is here, for preparing such good notes for the committee today. It makes it easy to refer to some of the pertinent information here. I don't know if you have those notes, but you have the information, anyway.

I mentioned this morning—I referred to it anyway—that total inspection activity is currently, at the time the auditor's report was written, at 73% of the 1995-96 levels. Inspectors are averaging fewer inspections annually. For example, last year inspectors visited only 54 of the 357 private drinking water treatment plants and 44 of the 1,119 smaller plants and designated facilities. Then it goes a little further—and I am getting to my question because I'm connecting these two. The auditor identified samples with high concentration of levels of regulated substances and, of those, 3,181 were adverse water quality incidents, which are more serious exceedances that can affect human health.

So my question, in a roundabout way, is just looking at these two. In a way, improving the system allows you to see even more effectively where the problems are. So

in one sense it can actually increase your workload in a positive way, because you're seeing where all of these adverse water quality incidents are happening. My question is, how are you going to reconcile that and making sure that you have the number of staff people to do all those inspections, given the shortfalls in previous years?

**Ms West:** Maybe I can just start off in response, and then I'm going to ask Michael Williams, who is our assistant deputy minister of operations, to speak to that.

You used in some of your examples the water inspection, and Jim Smith did comment and discuss particularly how he sees being able to address both the municipal and non-municipal in the upcoming years. So I'm going to suggest that Michael talk a bit about the broader compliance program that we have, how inspections fit within that and how he sees us being able to deal with our current resource levels or whatever else the government may want to provide to us.

**Mr Williams:** Basically what I'd like to convey to the committee is that inspections are just one particular tool in our toolkit to ensure effective regulatory compliance. I think it's important that there's an understanding that inspections, the way in which we do them, are like an audit function.

There was mention earlier this morning that there are a number of incident reports that come in. I can tell you that they've been ever-increasing over the past few years in the ministry to the point that there are over 40,000 pollution incident reports a year that come in. We respond to those. We don't count that response as an inspection. We issue over 8,000 environmental approvals that require industries and facilities to be regulated and meet effective regulatory performance. One of the things that we're doing—and I'll answer the question about resourcing but I think it's important to understand that the full spectrum of compliance depends on people doing what they're supposed to do, people being informed of it.

Our policy ADM this morning talked about her staff's work with stakeholder communities and groups when we go about to design a regulation or a piece of legislation, and then my staff from the field come in at the tail end of it. But we also work with those groups and associations as we go out and we do our inspection work. That often means that we have meetings with the industry associations. It means that we work with the parent organizations for those facilities to promote better compliance. I would suggest that there's a full range of things that get better compliance, beyond an absolute numerical count of inspections.

One of the things I'd also like to share with you is the deterrence factor. When you have very tough fines, and the fines have been increasing over the past few years; when you have staff who have an ability to issue what we call provincial officer orders; when we have directors in the ministry who can issue director orders—there's a wide range of tools available at our disposal to get regulatory compliance.

One of the things, just to give you a practical example of that, is the auto body sector. Somebody said to me

once, "How can you possibly go out there and inspect every auto body shop in the province?" Of course, the answer is, we can't. But I can tell you that before we started a program with the environmental SWAT team, we were getting about five applications a week for auto body shops for its environmental approvals. We sent SWAT in there to target that sector. SWAT went back and worked with the industry associations. We got 50 a day coming from the industry associations once we went out and helped educate them as to what their regulatory responsibilities were. That's just another means of bringing them into compliance.

You heard about putting information on Web sites and publicly reporting. We need a partnership with the public out there and we've found that one of the most effective tools is to have the results from the facilities posted in a public arena. The public cause some of our incident reports that I spoke about. That's why we've gone from about 20,000 a few years ago up to 40,000 now, because people phone us and say, "We think this is the kind of performance that should be happening out there," and our officers, our staff and our directors have to work on that. So there's a full range and a full suite of tools, and a full range of activities that are undertaken by a variety of staff, both in my division and in Jim Smith's division.

We have had resources come to the ministry for drinking water, as I think everybody is aware, and we continue to use those resources, in Jim's division to get the regulatory compliance that's needed with the water community, and in my division to get all of the other compliance that's needed for the other types of facilities across the province.

One of the other things that we're doing now, and it was alluded to earlier this morning, is the concept of risk-based inspections. It's very important, I think, that we don't just go by the number of inspections. The auditor was quite helpful in pointing out, and I'm sure it's in the notes, as it is in the auditor's report, that our coverage is declining. I believe the figure that's quoted in the report is it's about 73% of what it used to be, if memory serves me correctly.

Let me tell you the reasons why it declines. It declines because our inspections are becoming far more comprehensive these days. Years ago, an inspector used to spend, on average, about five hours in a facility. The average that my division now spends in a facility is 15½ hours. That's a threefold increase of going in there. I know from the days when, for example, my division had drinking water responsibilities assigned to it that the staff would take one, two or, in some cases, three weeks to get ready to do the inspection, because the protocol is so stringent and strict to go in and make sure there is no stone left unturned in terms of what they look at. So our planning time for doing inspections is increasing too. What I think that means at the end of the day is we have to have our resources appropriately apportioned to where the highest risk is. So we asked our director of the environmental SWAT team to prepare a risk-based assessment program for our overall inspections, and we're going to roll that out this year, in April.

The net result of that may be, with all the extra time we take to prepare, the extra time we take to do the inspection, focusing on risk, that we may see actual numbers drop a little bit more, because we're going to target those facilities that matter most. We're going to put our resources where we need to put them, on those that have the greatest potential to cause significant risk to the environment and to the public.

It's kind of a long-winded answer. I'm sorry; I don't mean to steal a lot of your time.

**Ms Churley:** You're doing better than most politicians here.

**Mr Williams:** I just wanted to tell you that while there have been resources come into the ministry, it's important that we look at the whole picture all across the ministry on what we do to get effective environmental compliance.

**Ms Churley:** Following up, you were here when Mr Flaherty was asking questions this morning around what you inspect and what you don't, and talking about the emphasis having to be more on those out of compliance or at risk and the smaller ones. I think there is some misunderstanding that you have to, under the new regulation—and let's clarify this. Under the new regulation, is it in your mandate to actually inspect every single municipal waterway, or not? How many did we say there were in the province? I think there is some confusion over that matter. Or can you do it on the basis of this risk management and other qualities that you look at within the water system?

**Mr Williams:** At the risk of stealing some time from our chief water inspector, I'm going to try to answer that question, and he can yell at me from the back row if I'm wrong. The short answer is no, we won't inspect every one. There has been a commitment made that we will inspect every municipal water facility across the province.

**Ms Churley:** Remind me how many of those there are again. I know I wrote it down somewhere.

**Mr Williams:** I don't know—

**Ms Churley:** I see you're in trouble already.

**Mr Williams:** There are over 650, I think.

**Ms Churley:** So those you will inspect, every single one.

**Mr Williams:** Those we will inspect, absolutely, on an annual basis. What I suspect we will find over time, in reference also to this morning's comment, is we're going to focus on the ones that we continue to experience some challenges and problems with. With some of the other ones, maybe we don't need to go in for days of inspection. Maybe we can go there and do a less stringent inspection, where we have effective regulatory performance.

**Ms Churley:** You've got a number. I probably have it written down somewhere, too.

**Mr Williams:** We've done 644 this year. That's the number I'm being handed.

**Ms Churley:** That's 644 this year.

Do I have—

**The Chair:** No, you're out of time.

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**Ms Churley:** OK, but I have more questions for later. There is somebody coming to answer a specific question, and when that person arrives, can we just have a quick answer on that?

**The Chair:** OK. Who's coming?

**Mr Williams:** Just give me a second. I'll see if we've got somebody for Boblo.

**Ms Churley:** We can proceed.

**The Chair:** Mr Fonseca.

**Mr Peter Fonseca (Mississauga East):** Thank you, Deputy, for the report this morning. In the report, it was mentioned that the auditor found that the hazardous waste information network does not support paper submissions, resulting in minimal use by the regulated community. Less than 1% of manifests were processed through the hazardous waste information network.

What plan is in place, and are you looking for an increase up to 100%?

**Ms West:** Not right now.

**Mr Fonseca:** What's the timeline to that plan?

**Ms West:** I'm going to pass it right over to Joan Andrew to speak to that. I did reference it briefly in my remarks, but I think she can elaborate further.

**Ms Andrew:** We've got a number of things underway. One is that we're doing outreach to the hazardous waste receiving community to get them on board. In order for a manifest to be processed electronically, it has to be initiated by the generator, carried out by the carrier and also by the receiver. So all three parties in the transaction have to use the electronic system for it to work. We know the generators are using electronic systems because they register with us electronically, and about 70% of the industry in Ontario I think is covered by three major receivers. So we're working with those three major receivers to get them on board. That would substantially increase the amount of tracking we do electronically. We think we can get it up, over the course of this year, to about two thirds.

In addition, we are redesigning the HWIN system to accommodate paper manifesting so that we don't have to use our old system that isn't going to last much longer. So we're doing two things. One is redesigning the existing system to accommodate paper transactions. But we do want to move up the electronic reporting significantly, because that gives us real-time tracking and monitoring of the movement of hazardous waste in Ontario. From an environmental point of view, electronic submission is preferable, but we know we're not going to move to 100% unless it is regulated, and I don't think that's in the short term.

**Mr Fonseca:** So what percentage will you get to, ballpark?

**Ms Andrew:** Our aim over the course of this year is to get to two thirds.

**Mr Fonseca:** That would be at the end of this year, you said?

**Ms Andrew:** I'm sorry, the end of 2004-05. The end of the next fiscal year. I've been doing too much next-year planning.

**Mr Fonseca:** This may have been brought up with Ms Churley's question. It was brought up that in developing a multifaceted compliance strategy to ensure that small non-municipal drinking water systems are aware of their regulatory responsibilities to test drinking water samples and submit results to the ministry, a number of other things have been put in place, in terms of your inspection, SWAT etc. Is there a whistle-blower program in place?

**Mr Williams:** I'll try and answer that. If by whistle-blower you mean, is there a way that somebody can make us aware of things that happen?

**Mr Fonseca:** Anonymously.

**Mr Williams:** We have a pollution hotline, a 1-800 number that's handled by our Spills Action Centre. Anyone can phone at any time, 24/7, 365. They can report it. That's one of the reasons why some of the numbers that I referred to earlier we're seeing go up so high, from 20,000 a few years ago up to in excess of 40,000 now. Every one of those is followed up on.

**Ms Andrew:** Just from a legislative or regulatory point of view, the Environmental Protection Act specifically covers three acts, maybe more—the Ontario Water Resources Act, the Safe Drinking Water Act, the Pesticides Act and the Environmental Assessment Act—to say that if an employee in a company reports untoward activity to us, we can actually, if they are disciplined in any way by their employer, charge that employer. So there is, if you want to call it that, a whistle-blowing provision in the Environmental Protection Act.

Also under the Environmental Bill of Rights, which covers a broader number of acts that go beyond our ministry, there's a provision that should anybody be disciplined for reporting to the EBR, or bringing something to the attention of the Environmental Bill of Rights registry, they can appeal to the Ontario Labour Relations Board.

**Mr Fonseca:** So it doesn't come in as an anonymous call? Would you follow up on an anonymous call also?

**Mr Williams:** Absolutely we would, and we would take whatever steps are necessary to substantiate the information that's presented to us. They would all be treated seriously.

**Mr Fonseca:** There's an awareness campaign in place for people who work at different facilities, that they would be aware of this 1-800 number?

**Mr Williams:** I would say a large number of people who work in facilities that have the potential for environmental impacts and have environmental approvals from us are well aware of the Spills Action Centre and its number. They have legislated responsibilities to deal with spills or environmental events. We did publicize the pollution hotline so that people would know, and we put that 1-800 number in place, and it's on our ministry Web site. So anybody who's interested in perhaps anonymously coming in with some tips to the ministry would be able to find it on the Web or through other avenues also, sir.

**Mr Fonseca:** I see that since 1995 many of the environmental laws and regulations were weakened. Some-

thing like hazardous waste, I know it quadrupled since 1995. Has that caused many constraints on your ministry?

**Ms West:** Maybe you can just help me with that question. I'm not sure I understand the question.

**Mr Fonseca:** I'm just asking in terms of your human resources. Has that been difficult to manage?

**Ms West:** Understandably, as we have had a fairly aggressive policy program over the past little while, I think what we've been able to do is shift the capacity as the regulatory emphasis shifts itself. It has been a little hectic, I must say, over the past year or so, but we've been able to manage it and phase in approaches to it to meet expectations.

**Ms Deborah Matthews (London North Centre):** I want to focus in on the hazardous waste part of the report, especially as it relates to the registration. Can you explain to me, please, who registers, who doesn't register, who's voluntary, who's mandated? Can you just walk us through that, talking about the producers, the carriers and the receivers?

**Ms Andrew:** The people who have to register every year are the generators of hazardous waste. Until the regulation was introduced in late 2001 or early 2002—I've forgotten, to be honest, whether it was December 2001 or January 2002—there was no annual registration. So we had a database, if I can say that, of anybody who had ever registered as a hazardous waste producer in Ontario over 40 or 50 years. We introduced an annual registration component, and the first year it was in effect was 2002. The technical date for registration is February 15. There's a six-week period from January 1 to mid-February every year. With the first-year registration, by the end of that year there were about 23,000 generators registered, but by the mid-February date, there were far fewer, maybe 6,000 or 7,000.

**Ms Matthews:** So when were there 23,000?

**Ms Andrew:** By December 2002. Then last year, in 2003, we had about 8,000 registered by mid-February, and about 21,000 registered by the end of the year.

This year, in order to increase the on-time registrations, we started writing to everybody who was registered last year to remind them to re-register. By mid-February of this year, we were up at over 13,000 registrations, which is a significant increase over the two previous years. We have now, this past week, written to everybody who didn't re-register to remind them they may be out of compliance. But it would be fair to say that some people are not frequent shippers of hazardous waste. They may just do it once or twice a year, and, to be honest, they register just before they ship. So there will be, over the course of the year, a growing number of people who register.

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I'll just use this as an example: Most universities that have any kind of science or engineering facility will ship a tiny amount of hazardous waste because their science labs generate some of it. But they're not shipping bulk quantities every week somewhere, so they'll probably

register, say, toward the end of the term when they're cleaning up their labs and stuff like that. I'm not trying to dismiss their noncompliance, but I want to put it in perspective.

In the two full years since we've had this, we've started out each year at between 6,000 and 8,000 registered by February, and between 21,000 and 23,000 registered by the end of the year. Once they've registered, they pay a flat registration fee and then pay fees for the type and quantity of waste and what's shipped over the course of the year. When I talked about manifests, that's a bill, if you can call it, for each shipment. We have about 2,000 of those we process a day.

**Ms Matthews:** I'm going to stop there, but we're going to go back and talk about the carriers and the receivers.

How do you know, can you know, who is producing or generating hazardous waste and is not registered?

**Ms Andrew:** I may have to call on someone else to do this, but we know, if I could say it this way, all the major generators of hazardous waste. We know the industries they come from. We've had a semblance of a registry for a number of years in Ontario. The other thing is that if there were significant amounts of hazardous waste—we may be missing one or two; I'm not saying we're at 100%—we would know if there were significant shipments or dumping of hazardous waste in Ontario, because you would see it. That's part of it.

**Ms Matthews:** How would you see it?

**Ms Andrew:** It would be in landfill sites or at the edge of roads.

Michael does the compliance side.

**Mr Williams:** One of the things that I could tell you is that our district inspectors have gone out and done 432 inspections thus far this year of waste generators to make sure that things are going on properly. I can tell you that a large number of them, almost 300 of them, passed the inspection. Some did not for failing to comply with the approval that was issued. There were some waste infractions, and there were manifest or bill-of-lading errors.

We also sent the SWAT team out in a sweep of the sector to conduct 500 vehicle inspections, just to see what was in those vehicles and what was supposed to be in them, and where their origin and destination was. We've undertaken that in the past year.

We have a program that's been designed to respond to the issue of compliance with HWIN this year. Basically there are three things that we're going to do. We're going to continue to target those shipments that we have some concern with, and we're going to give the priority to those generators who did not register or didn't register for the appropriate waste classes. We're also going to put the environmental SWAT team back on that.

The second thing we're going to do is go after where the annual re-registration requirement has never been completed. We think there are about 1,300 sites that fall into that category, so we're going to put resources to it. We're going to post the list of delinquent operators on the HWIN Web site, and then that will come back to our

MOE district offices for further abatement action. The generators that are in arrears will receive a little visit and a chat from us on that front also.

For the generators who have missed the February 15 deadline the ministry will also have an outreach strategy as well as a follow-up strategy, and that will be done by the field officers.

**Ms Matthews:** So what is the biggest hammer you have when someone isn't complying? You send letters.

**Mr Williams:** Complying with?

**Ms Matthews:** Who isn't registering.

**Mr Williams:** If we encounter someone who's not complying administratively with the regulation, then the officer who discovers that can issue a provincial officer's order to require it to be brought into compliance. That order can be appealed by the person who we catch, so to speak, to the director. The director has further measures that he or she could take.

If there's no co-operation and no compliance, at one point in time in the process we'll make a decision on whether we're going to give that to a ministry investigator. There is a hand-off from the point of seeking voluntary compliance, to moving through orders, to "Let's take it into the courts."

We can also issue Provincial Offences Act tickets on the spot for some of the more minor infractions. So there's a full suite of regulatory tools, and we will go as far as we need to go to bring compliance.

**Ms Matthews:** But there's no licence that can be revoked? A fine is the worst you can do?

**Mr Williams:** Excuse me for a moment. I'm sorry, I need my director of enforcement here to give me the absolute legislative route on this. My understanding is that if they don't have a manifest and they're not registered, they don't have a licence. So they have to go through the process of, "Let's take them to court and get a fine," if we follow through with that.

If they do have a licence, I think that we would be examining the severity of the offence and taking a look at what possible action there would be. I'm unsure at this time of exactly whether we have revoked licences, but we do have the regulatory authority because they would have a document from us known as a certificate of approval. That governs the carriers, and we could make a determination that we want to pull that certificate of approval.

**Ms Matthews:** So now we're talking about the carriers?

**Mr Williams:** That would be for the carriers, the certificate of approval.

**Ms Matthews:** The registration of carriers is voluntary?

**Ms Andrew:** The carriers have the certificate of approval to be a hazardous waste carrier.

**Ms Matthews:** Somewhere in my notes here, I saw something about voluntary registration of carriers. Maybe I misread that.

**Ms Andrew:** Generators of waste, under the regulation, have to register every year. What's voluntary, I

guess, is the use of the electronic manifesting system by all three parties. But there's no annual registration for carriers; they have a certificate of approval to be a hazardous waste carrier.

**Mr Williams:** It is not voluntary to get that government approval, that certificate of approval. It's a legislated requirement to get that. As a carrier, to use HWIN is voluntary, I'm informed.

**Ms Matthews:** I'm sorry, to use—

**Ms Andrew:** To use the electronic version. They have to submit the manifest.

**Ms Matthews:** The receivers of the hazardous waste are also licensed?

**Mr Williams:** The receivers of the waste are licensed with the government approval, called a certificate of approval.

**Ms Matthews:** I live in London and we drive on the 401 a lot. We drive past trucks, and we assume that the province is looking after any hazardous waste that's on the road, from generation to disposal. So that's a safe assumption. People can assume that you're looking after that.

**Ms Andrew:** Yes. The generators have to have certificates of approval. Then they have to be registered. The carriers have to have certificates of approval, and the receivers have to have certificates of approval. I think even in the auditor's report, the percentage of manifests that were processed for generators that didn't have a licence was less than 1%, and for those that were for the wrong class of waste it was less than 2%. So it is a very complete system in terms of compliance.

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**Ms Matthews:** You're comfortable with the monitoring of it?

**Ms Andrew:** I'm sure we can always look to do more. The reason we're targeting the goal of getting increased electronic monitoring is so we can have real-time monitoring and tracking of the waste, as opposed to something that is sometimes, say, two weeks after it happened. That's why, in answer to the earlier question, we've set this goal of trying to have two thirds of the system electronic, because it will give us greater ability to track in real time the movement of hazardous waste. I'm not saying we don't have improvements to make, but we do have a good, strong system in place.

**Ms Matthews:** I commented to my colleagues earlier that a registered letter or a courier package can be tracked. You can know exactly where it is at any point in time. It seems to me we should have the same ability for things that could be very dangerous to our health.

**Mr Williams:** That's our goal, and that's what our district and SWAT team will be following up with: the generators, the carriers and the receivers on that.

**Ms Matthews:** Thank you very much.

**The Chair:** That's 20 minutes in total. I think there was an answer to—

*Interjection.*

**The Chair:** How long are you going to be, Mr Berardinetti?

**Mr Lorenzo Berardinetti (Scarborough Southwest):** Perhaps five minutes.

**The Chair:** That's fine. You go ahead then.

**Mr Berardinetti:** Just a few questions on the water issue. I guess that was what I was most concerned about.

What I wanted to ask is on the whole issue of Walkerton again. Can you come and say that we are safer today than we were a few years ago with regard to Walkerton? What safeguards have been put in place to ensure that?

**Mr Smith:** Thank you for that question. Certainly as Ontario's new chief drinking water inspector that's a matter that's top of mind for me, and what I'd like to do is share with the committee my thoughts on where we are today. I mentioned the seven pillars that I see that Ontario has in place and I'd like to speak to that.

Certainly the ministry has in place a comprehensive framework that ensures the regulated community delivers safe drinking water to the people of Ontario. Because we are talking about Walkerton, I'd also like to quote Justice O'Connor as well in terms of what guided him in terms of his 121 recommendations that we're implementing.

He said: "... the recommendations' overall goal is to ensure that Ontario's drinking water systems deliver water with a level of risk so negligible that a reasonable and informed person would feel safe drinking the water.

"The risks of unsafe drinking water can be reduced to a negligible level by simultaneously introducing a number of measures: by placing multiple barriers aimed at preventing contaminants from reaching consumers, by adopting a cautious approach to making decisions that affect drinking water safety, by ensuring that water providers apply sound quality management and operating systems, and by providing for effective provincial government regulation and oversight."

In terms of Ontario's approach, what I'd like to highlight is what we have in place, what I believe are the seven pillars.

One is a comprehensive regulatory framework. We have the Safe Drinking Water Act, 2002. We have the drinking water system regulation 170 that we certainly discussed this morning in terms of providing strict water quality standards, regular sampling and testing, microbiological and chemical testing to be done by accredited laboratories, minimum standards for treatment, and clear notification requirements.

It also includes public reporting, tough penalties, as we just discussed for non-compliance, and introduced a whole range—we talked about eight categories of drinking water systems, and nearly 3,000 have registered. In the future, the regulation will have provisions for many more.

We also have compliance promotion. I spoke to that this morning. It's really important that the systems across Ontario understand what the regulatory obligations are. For the smaller systems, it's important for them to understand how they can fulfill those recommendations and requirements in plain language text.

I myself participated in a number of workshops in the fall and I met nearly 900 operators and owners of water

treatment plants, predominantly from the municipal sector. Certainly what I saw was a positive response, in terms of their regulatory responsibilities. Yes, there were many questions, but I think that community has jelled, and also sees Justice O'Connor's recommendations as their goal for meeting those.

We have standards for treatment in place. Ontario has 161 chemical, physical, microbiological and radiological parameters. That's a very comprehensive suite of parameters for testing. We have stringent treatment requirements for surface water and groundwater.

The second pillar is really the operational side: timely and reliable testing with the accredited labs in place, the requirements of sampling, testing, reporting to the ministry. I believe that's a good foundation for that area.

The third, and very important, is immediate notification of adverse water quality incidents. I believe that's well in hand. That is something that certainly the people of Walkerton didn't have at the time that worked well for them. I believe it works well now for the people of Ontario.

We have mandatory approvals in licensing of drinking water systems. We're working toward a regime for the future for licensing that will require a permit to take water, an operating plan, a financial plan, an accredited operating authority and a drinking water permit. So it's a future requirement that we're working toward.

We also have for the smaller municipal plants, as I mentioned this morning, engineering evaluations. A licensed engineer would need to inspect their system and ensure that it's meeting our regulatory treatment requirements.

The fifth pillar we've talked about extensively this morning is our expanded and enhanced inspections program for drinking water. We have a thorough inspection protocol, and we've fulfilled all of Justice O'Connor's recommendations in his reports on the thoroughness of those.

The sixth pillar I see is integrated data acquisition and information management. We've gone a long way since Walkerton in terms of the information that we collect, that we can assess and act upon. We will continue to move forward in terms of integrated systems and future capability for our assessment.

Lastly—it was spoken to, and a question was about that as well—we have rigorous enforcement of regulations. That drives our compliance and inspection protocols, in terms of what we're looking at. As Michael Williams had mentioned, it also acts as a deterrent. It's a signal to others that they must meet their regulatory obligations.

Those are the seven areas that we've made substantive progress on. They all are in fulfillment of certainly Justice O'Connor's recommendations. I believe we've gone a long way since Walkerton.

**Mr Berardinetti:** Thank you. I think that uses up my five minutes, Mr Chair. I thank you for your answer.

**The Chair:** Mrs Munro.

**Mrs Julia Munro (York North):** Thank you very much.

**Ms Churley:** Do you mind [*inaudible*] come especially to answer a question, and might want to go back to work.

**The Chair:** That would be a good idea.

**Ms Churley:** Thank you for your indulgence. You can take it off my time later, if you want.

I had asked—I'm sorry, I don't know your name.

**Mr Jim O'Mara:** My name is Jim O'Mara. I'm director of environmental assessment and approvals.

**Ms Churley:** Thank you very much for coming. I wanted to ask you, as we were talking about water this morning, about a particular issue, and that is the Boblo Island water plant.

Speaking of Walkerton, I've been receiving letters from people from that community in Amherstburg who say that you need to move on the new plant to avoid another Walkerton. They are very, very concerned that approvals have not been given yet to go ahead. They've sent me all kinds of horrible pictures of the existing water system they have, which is about 100 years old, and outlined many of the problems.

According to them—some people in the town—they are saying that the minister had promised town officials that the Ministry of the Environment would hold itself accountable to the 66-day timetable for a request for, I guess, an EA. That hasn't been done yet. The reason why people are coming to me at this point is to see if I can help move it along or find out what the problem is, because they are very concerned about the safety of their drinking water. I'm just wondering if you can give us an update on that.

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**Mr O'Mara:** Thank you very much for your question. The town of Amherstburg is undertaking a number of projects related to its long-term supply, the servicing of Boblo Island and the implementation of it and management strategy. During the course of the development of their project, under the municipal engineer's class EA, two bump-up requests, or part II order requests, were received. We have processed those requests, and we have denied those requests. The town has been notified that it can proceed with construction. They were notified last week.

**Ms Churley:** I just heard from somebody today on this.

**Mr O'Mara:** We sent the information to the town by fax last week.

**Ms Churley:** OK, that must have been late last week, but it has been done. This is good news. They can now proceed.

**Mr O'Mara:** Absolutely.

**Ms Churley:** All right. Thank you for that information.

**Mrs Munro:** Thank you for joining us today. I'd like to turn our conversation just slightly to what I consider to be the next step. Obviously, for reasons I understand, the auditor has spent much of his report on the efforts you have made over the past little while with regard to collection of data and the importance of its integration

and the importance of being up-to-date and so forth. I think we need to just spend a moment or two looking at the outcome, what all the data is for. It would be my suggestion, as I understand it, that basically we're looking at compliance and, where appropriate, mitigation. I wonder if you could comment either on your perception on what the ultimate outcomes are that you see in this process and whether or not the two I've suggested fit in with your vision.

**Ms West:** Yes, I would say absolutely. The two that you mentioned are very much an important consequence of our being able to improve our information collection, analysis and management systems. I think we've talked a fair amount about compliance today—certainly on the water side—and Mike Williams also talked about it in the other activities with respect to inspection and the broader compliance program. I think that broader compliance program, and again, Michael Williams spoke to that, also includes the notion of mitigation to try to get, for example, an understanding of problems in a particular sector, to be able to get to the industry in advance to help to educate them so they can take some ownership and responsibility and ensure their members understand their requirements to comply and can start to build their capacity and their response to it. So that's an important part of the continuum.

However, I think there are other areas, and if you look at the areas of OnAir, for example, there are other opportunities for use of that information. I think as we have a better understanding of emissions and an understanding of the trends, it does help us in terms of policy analysis and development in support of government; in regulation, it helps us in terms of our partnerships with private stakeholders, companies and other levels of government in identifying programs or approaches to try to reduce the harm of pollution in our environment.

I think there are lots of opportunities and uses for the information that we collect. We need to have a better way of analyzing that, and we're starting to do that. I think we need to feed that into our earlier considerations, whether it's on policy development or program design, to help to deal with that mitigation factor you mentioned.

**Mrs Munro:** Thank you. We've heard quite a bit about the issues around compliance, particularly with water, but I just wondered if you could give us some other specific examples in terms of where you find yourself employing the carrot and where you find yourself employing the stick. I think things like sending letters, the issue around voluntary compliance, some of those things tend to give people the feeling that we need to be more aggressive in some areas. On the other hand, there are going to be circumstances where you have to educate before you can expect to have any changes made. People have to understand, then, and own the problem, obviously. But we can't put them all out of business.

So I guess my question is, how do you find a balance between the carrot on the one hand and the stick on the other, and can you provide us with some specific examples other than the ones you've mentioned?

**Ms West:** I appreciate that opportunity, because I think too often we go to the stick as our measure or the tool that's available to us for ensuring compliance on the environment. I think there are other measures earlier on in that continuance that we have to be paying better attention to, and we are, in working with industry and working in partnerships with NGOs such as Pollution Probe to find ways to both educate the public and deal with specific industries and specific companies in seeing how we can in advance deal with prevention as opposed to dealing with the outcomes.

I'm going to ask Joan Andrew to speak briefly to compliance assistance and co-operative agreements, and then I'll ask Michael Williams to just speak briefly about SWAT, which occupies both ends of the continuum.

**Ms Andrew:** We've started a couple of pilot programs, one we call "co-operative agreements," which is really a program for environmental leaders who are always and regularly in compliance with our programs, trying to look at how you could work with them to incent even better behaviour, if I could call it that, so they go beyond the minimum. We've looked at a program for those people who have been in compliance to agree to further reductions of substances that are of importance to us—nitrous oxide, sulphur dioxide, those kinds of things—to take even further cuts. In exchange, we do things like maybe preferential treatment in the timing for the processing of their certificates of approval, we post their names on our Web site. We do those kinds of things. There's no financial incentive, but it's looking at how we could partner with industry leaders to go beyond compliance. So that's the co-operative agreements program.

The other one, which we call "compliance assistance," is working largely with industry sectors made up of small employers which need assistance in plain-language versions of our regulations, may need some resources to do outreach to their own members. It's better that they do it rather than having us do it. So it's looking with the auto body sector and those kinds of things at how you can do outreach.

We also have some programs where we've contracted with Seneca College, I believe it is, to provide training for dry cleaner operators so they understand some of the solvents they're using. We've done a program with Sir Sandford Fleming for well drillers to make sure they're up-to-date.

So we have a variety of different partnerships to try to address key shortcomings in some industries, particularly industries where there are a lot of individual owner-operators or they're small employers, and understanding our regulations is not always easy.

**Mr Williams:** One of the things I would add to that is that when we look at SWAT it isn't totally the image that was presented this morning of our officers out there in flak jackets. I want to tell you what we do after that also. SWAT targets repeat violators, repeat offenders. SWAT looks at the compliance records and history and factors in deliberate non-compliance, and then we go in and we do

a very thorough review of the sector. What's really important about it is not so much going in at the front end but it's what we can get in terms of driving environmental improvements at the tail end.

I can tell you that one of the features of SWAT is the diagnostic stuff that I spoke to earlier that we really want to get to right across the province, because in the example where it's done, when we take a snapshot up front of the non-compliance, we go back a year or two later, after we've worked with the industry associations, after the SWAT team has come in and said, "We think we may need some regulatory change, better policies, things explained better," and we take a look at the improvement in performance and find that, although SWAT is sort of the big stick, to use the vernacular, going in at the front end, there's lots of times when the uniforms are off and we're actually looking at, what is the legislative change? Can we get out there? We go to weekend conferences, for example. We have the director go to conferences also and work in speaking engagements. We try to drive all that industry association to take some responsibility for its members to get better compliance at the end of the day. That's an example where the big stick comes out in front, but we keep driving it all the way through the cycle to get better performance.

1400

**Mrs Munro:** Another area that has been brought to my attention is a situation where we have the Ministry of the Environment laying charges against a municipality, and essentially what we have is the situation where one level of government is paying a fine to another level of government. I just wondered whether you have looked at the efficacy of that. Perhaps it doesn't happen very often, but certainly I think from the point of view of the taxpayer it seems like a very strange situation, where the imposition of a fine is really something the taxpayer is paying for. Does it really impact on the behaviours of the people who are responsible for creating the conditions for the fine being laid in the first place?

**Ms West:** Maybe I can just comment in response. Obviously, in terms of the dynamic, of course the municipalities find themselves to be part of the regulated community. Mr Sterling referenced that earlier as well. That's understandable and it's necessary as they operate or are responsible for waterworks or other things.

I am going to ask Michael Williams to comment, because in terms of trying to deal with compliance at that level, obviously fines are another tool or are a result of a prosecution, for the most part, over which we have some level of control. But it also goes into another stream, in terms of appearances before a tribunal or before the court itself.

Michael, maybe you have some comments in terms of the efficacy.

**Mr Williams:** We have a number of regional directors across the province. There are five of them, actually. One of their key roles is to liaise and work very hard with municipalities—with all levels of government, whether it happens to be a township, a rural area, a city in an urban

area or an upper-tier level of government such as a county or region. They generally have very good relationships in terms of the co-operative contact we have with them explaining the rules, legislation etc.

Our approach—and I'm mindful of the Chair's comments earlier—is that the municipalities in many ways are our partners in environmental protection. In some cases, we naturally prefer to start at one end of the spectrum in that tool kit that we explained earlier. We work very hard through voluntary works. We work very hard through educating. We work very hard counting on the professional working relationships that our staff have along with the various staff and departments of municipalities.

It's a move that, at the end of the day, when the results don't appear to be there in the way in which we'd like them to be there, we go in the direction that you've alluded to. I would like to think that we don't go there very often, but we do have the laws of the province to enforce and we have to take that step.

**Mrs Munro:** A question related to that: I wondered if you could explain any difference, if there is any, between the manner—I'm not talking necessarily of a difference in fine, a raw number—in which compliance would be proposed between the two sectors, the private sector and the public sector.

You were obviously just speaking about the municipality. I think I could give you an example that might explain where my question is coming from, and that is an experience I am aware of where, when there was pressure brought on a private sector individual with regard to compliance, his response was simply to lock the door and move away. So I just wondered whether or not, when you're dealing around the issue of compliance, you are mindful of the difference between the dynamics of this kind of situation with the public sector and the private sector.

**Mr Williams:** When we look at the whole issue of compliance, we don't take lightly that large stick or the move into the enforcement arena. We do it thoughtfully, carefully, we well consider our action on that, and we look at the environmental infraction. Our role is to defend and protect the environment and the public interest, so there are some times where there's just absolutely no question. We don't care who it is; that's it.

I think it's very important that the committee knows that the environment comes first. That's the role for our ministry, that's what drives us out there. But we have a couple of tools that take us there in steps, and I mentioned a little bit earlier about the orders that provincial officers or a director could issue. Particularly in dealing with some of our clients, we will use the order route. We will ask, we will tell, through an order—and there are rights of appeals through those orders, but we will use provincial officer orders or director orders before we get to the final thing, which is calling in the investigators and moving through to prosecution.

I just want you to be aware that there's a range. It's discretion and it's judgment that's applied to the situation

and we pick the tool that is most appropriate to be able to ensure that the environment is protected.

**Mrs Munro:** My final question: I wondered if you could comment on, in the areas that we've discussed just now, the position of Ontario vis-à-vis other Canadian jurisdictions and any examples of non-Canadian jurisdictions that you might be familiar with, where we are in the tally in terms of the whole issue around dealing with the issues in the areas the auditor has brought forward.

**Ms West:** Maybe I can start off at least by giving you some of my experience. I've been in this position for just over a year and have had the opportunity to meet with a number of my colleagues from other provinces within Canada. Certainly, as I've talked to them about some of the initiatives, if you will, that Ontario has underway, whether we talk about SWAT or co-operative agreements or a risk-based assessment, the diagnostic tools that we have and certainly the whole response to drinking water, that whole regime or the seven pillars that Jim Smith referred to, I can say, in my discussions with them, they are nowhere near us. They have other areas in which they have taken initiative and that we want to learn from, but certainly in terms of some of the approaches that we have underway, they do learn from us.

That doesn't mean that we should that we've gone as far as we can go in terms of innovation and in looking for appropriate partnerships and in looking for the widest range of methodologies and approaches to ensure the best protection of the environment. From my experience over that short period of time, I think Ontario is very well positioned. I would invite Joan and Michael to speak as well in terms of their understanding, particularly with other jurisdictions.

**Ms Andrew:** Just to use it as an example, regulation 127, which was the regulation on air contaminant discharge monitoring and reporting for OnAir, we were the first jurisdiction in the world to require full monitoring and reporting on the full suite of greenhouse gas emissions. In fact, after we introduced regulation 127, the federal government amended their reporting structure to include greenhouse gases on their reports, but until that date they hadn't required reporting on greenhouse gases. So those are the kinds of examples of what we're doing.

The HWIN system, I think, was the first electronic hazardous waste reporting system in North America. Part of what we're struggling with is bringing the North American industry up to modern business methods of using electronic or e-business processes. So I think in those cases—maybe on HWIN we got out ahead of the sector but in the others, not only has what we brought in allowed for better environment monitoring in Ontario but it's actually changed the behaviour of some of the other folks we work with.

1410

**Mr Williams:** On the enforcement front, the innovations and pioneering that have gone on with respect to risk-based approaches to compliance with the environmental SWAT team and indeed some of the work we do regionally have been recognized in North America. Our

directors and staff have been asked to speak at enforcement conferences to demonstrate the innovation that's being shown in Ontario by how our folks are delivering those programs.

**The Chair:** Do you have some questions?

**Ms Churley:** I do.

**The Chair:** I didn't see your hand.

**Ms Churley:** Sorry. I thought we were doing rotation. I do have some questions, and I appreciate your giving me the opportunity.

One of the issues I have raised frequently over the past couple of years—I think it was last May I raised it with the then Minister of the Environment, Mr Stockwell. I know, Deputy Minister, you've only been in your position for a year, but there was about \$200 million that had been allocated from the ministry to sewer and water upgrades, and that money had not been flowed, the last time I asked about it, to a sewer and water plant that desperately needed upgrading. This relates to some extent to the previous question around some municipalities getting fined for being out of compliance. This is a double-edged sword, because in some cases—and this is an ongoing concern and problem; I think we all agreed, when we were having lots of disagreements about many things, that this is an issue of great concern—some of these smaller municipalities need to upgrade their systems, but they don't have the funds to do it. The question is, has that money now been flowed, and what other plans are there to help these smaller municipalities reach compliance?

**Ms West:** I may have only been in my position for just over a year; Joan just moved to her new assistant deputy minister position a few weeks ago. Previously she was the ADM responsible for that area, so, happily, she'll be able to give us a response.

**Ms Andrew:** The OSTAR program—

**Ms Churley:** Ah, yes, OSTAR.

**Ms Andrew:** There are probably three different government funding initiatives that are still ongoing in terms of money that goes to municipalities for the support of water and sewer infrastructure. Just so we're clear, the ministry has a role in reviewing applications and providing recommendations, but the money is actually provided by the Ministries of Municipal Affairs and Public Infrastructure Renewal.

**Ms Churley:** Is that system still in existence with the new regime, the new Liberal government in power, or is there any change afoot so that the Ministry of the Environment actually has more of a say? That is something I've been promoting for some time.

**Ms Andrew:** We still do all the technical reviews related to water, sewer and waste and make the recommendations as to the funding. We provide that service to both the Ministries of Municipal Affairs and Public Infrastructure Renewal for the OSTAR program, the millennium program and all loans given out under the Ontario Municipal Economic Infrastructure Financing Authority. So we do that review.

On OSTAR, which was aimed mostly at small rural communities, initially there was some problem flowing

the money. Then the government made a decision at that time to flow 50% of what Ontario's share would be upfront, to assist with some cash flow difficulties in municipalities. But the rest of the money is flowed as construction takes place and bills are submitted and invoices done, so the work actually going on is paid for.

**Ms Churley:** So I could find out more about where that money has gone through the Ministry of Municipal Affairs?

**Ms Andrew:** Yes.

**Ms Churley:** OK, I will do that.

The second question is on SWAT, which has been mentioned numerous times. It sounds like they have quite a job. There are a lot of activities they need to respond to. First of all, how many officers are there now, and what kind of backlog do they have in terms of keeping up with all the requirements? Third—maybe I should leave the third part until after your answer, because it's a little different.

**Mr Williams:** In the environmental SWAT team we have 30 officers dedicated to environmental compliance. They are a highly mobile force that we disperse across the province on any given issue. I'm going to separate those numbers, because there are also 24 staff who deal with smog patrol, the vehicle emissions unit. So we'll keep them apart, because I suspect we're going to talk—

**Ms Churley:** Because that's all they do, right? They don't do the other.

**Mr Williams:** Yes, that's correct.

**Mr Flaherty:** Do they have bulletproof vests?

**Mr Williams:** They have full uniforms. They're on the sides of the roads.

**Mrs Sandals:** They have gas masks.

**Ms Churley:** But they have gas masks; they don't need bulletproof vests.

**Mr Williams:** I have homework from this committee: to go back and look at the uniforms of my staff.

With respect to them, they have a number of sectors that they target. It's done on an annual planning basis, on, as I've said before, a risk assessment basis. We also keep some capacity of the SWAT team when we need to deploy them on to specific issues. I can give you an example of that. You've probably seen that we've been down in southwestern Ontario recently, in the Sarnia area. We want to move in there in a big way to be able to take a look at whether we can get a little bit better improvements vis-à-vis some of the chemical industries that are down there. So basically, the director of SWAT has a program that's laid out, and we work on a fiscal year with respect to what we tackle. SWAT complements the district work. As I think folks know, there are district staff, district abatement officers who are out there doing what I would characterize as our regular abatement program with the industries and facilities that are in their area of jurisdiction.

We move SWAT around. We target sectors that we don't normally deal with in the district abatement perspective. When we move SWAT around like that, we need to balance priorities on the program areas. For

example, we didn't have an ability to predict that we needed to be in Sarnia with a couple of recent events there. So I've had a discussion with the director, and we've moved folks into Sarnia for a period of weeks. That will necessitate our realigning some priorities with other projects. We were going to look into metal foundries, for example, so we will delay that. We will delay that until we get our work there finished. So it's a question of setting priorities, pushing some things back a little bit and refocusing efforts, depending on what the issue is, where we need them to get at it right away.

**Ms Churley:** What do the 24 smog control staff do during the winter months?

**Mr Williams:** That's a good question. I'm going to get my director of SWAT up here to answer that. This is John Stager. He's the director of the environmental SWAT team, and he can help me with that.

**Mr Flaherty:** Where's your bulletproof vest?

**Ms Churley:** Where's your bulletproof vest, on behalf of Mr Flaherty?

**Mr Williams:** He left his full regalia, his uniform, in the locker back at work because I didn't think it was appropriate for this crowd.

**Ms Churley:** Hey, maybe it was for this crowd.

**Mr John Stager:** Good afternoon. I'll speak to the on-road enforcement part of the environmental SWAT team. As you know, there is an on-road enforcement group within the environmental SWAT team composed of two groups. One is a heavy-duty group that focuses on heavy-duty vehicles, primarily trucks and buses, that kind of thing. The second group is a light-duty vehicle group that focuses on basically cars.

The work continues, actually, 12 months of the—

**The Chair:** Did you say cars or carbs?

**Mr Stager:** Cars. Automobiles.

The work basically continues 12 months of the year. There are two facets to the work they do. The first facet is visible emissions. Obviously, what they're looking for are the grossly polluting vehicles. As you all know, and I think it has been said before, grossly polluting vehicles emit as much as 20 times the pollutants of a regular vehicle. So their first job is to stop those vehicles and obviously ensure that they aren't emitting those levels of pollutants.

The second area they look at with vehicles is the emissions control equipment itself. Part of their responsibility is to actually open the hood of the vehicle and ensure that the originally installed pollution control equipment is still there. That work does continue, again, throughout the year. So the basic mandate of their work is consistent 12 months of the year.

**Ms Churley:** OK. Thank you. That's good to hear.

I think I'll just have one final question, in the interests of moving on, and I thank you for the time today. Given all of the information and given the comments from the auditor, what would you say—and I say to the acting auditor that we have veered all over the place today, but using his report as a very good backdrop for that—is your biggest challenge that you have to face now, given

the kinds of questions we asked today and the challenges in front of you?

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**Ms West:** In going back to the focus of the Provincial Auditor's report, I think it is a challenge, and that is, trying to move on those various information technology systems, on environment in particular, to make them as robust and as effective as they can be to provide us with the information we need, both to deal with our issues of compliance and, as I referred to before, assisting us in terms of good policies or direction, as well as providing the transparency and information to the public that I think is required to allow them to understand the dilemma ahead of us in terms of dealing with concerns of the environment, pollution in particular, and allowing them to provide whatever sort of advocacy or action that's appropriate for them as well.

We've talked about how far we've come since the Provincial Auditor's report, and how much we appreciate the advice and information that that has given us to allow us to improve the systems from where they were even then to where they are now. But I think there's lots of room for us to go. We've got a good fundamental basis, but there are some exciting directions we can take on, and the challenge is to get there from here. Resources will be an issue or an input to that, but it's also ensuring we've identified the right direction and taken the right course to get there.

**Mrs Sandals:** Just a couple of follow-up questions first, and then I wanted to go back to the hazardous waste issue. Mr Flaherty mentioned the whole issue of a tremendous amount, when we look at the auditor's report, of what appears to be non-compliance in terms of tracking water samples and various things like that.

I was wondering, has the ministry hired any staff, temporary or otherwise, to deal with some of that backlog of processing records?

**Ms West:** Jim, I think you can respond to that, please.

**Mr Smith:** In terms of the backlog that the auditor identified, we did assign additional staff to that task. We did, as I and the deputy indicated, deal with the outstanding registrations at the time, and obviously continue to register the new facilities that submitted the information to us. We track that on a weekly basis, in terms of systems that are registering, and our status on those. So that's a business process we have in place now.

**Mrs Sandals:** So then, while there had been a backlog built up of dealing with you since our government came in, you have in fact been able to assign additional staff to deal with that backlog.

**Mr Smith:** We have dealt with the backlog. We are also in the process of recruiting some additional staff. There was a commitment made, and we're following up on that, on 33 compliance staff for the drinking water program area, where we're currently in the process of recruiting.

**Mrs Sandals:** So that would be in response to Ms Churley's question around compliance staff and inspectors, that in fact there have been, or you're in the process,

as you say, of 30 additional staff being hired to deal with compliance and inspection issues in the area of drinking water?

**Mr Smith:** That's correct.

**Mrs Sandals:** Thank you very much. That's very good news, and I do appreciate your attention to that.

If we could turn to the hazardous waste issue, first of all, what might be a dumb question on my part. When I see this, this seems to be very specifically about hazardous waste. When I speak to the emergency measures planning people in my municipality and ask them, "What do you consider to be the greatest risk?" they point out the back window of city hall and point at the train track that's 20 feet away and say, "Hazardous materials." When I talk to my fire department in the rural area of the municipality that the 401 cuts through and say, "What do you think is the biggest risk in Puslinch?" they say, "Hazardous materials."

I take it there's a distinction between hazardous waste and hazardous materials, which may or may not be waste. They may deliberately be things that we're just trucking from one place to another for a purpose. Where do hazardous materials get handled in all of this? I don't want you to dwell there for a long time because I realize that's veering outside the report, but I'm just curious.

**Ms Andrew:** Lots of materials that are used in day-to-day processes are hazardous in certain concentrations and volumes. So even, say, chlorine, which is absolutely essential to ensuring safe drinking water, is also, if you poured a whole bunch of it into a small amount of water—

**Mrs Sandals:** If you had a tanker full of it, it's quite lethal.

**Ms Andrew:** If you had a tanker full of it, it could blow up. We actually have a specific definition of hazardous waste which we use in our regulation for waste. But I think a lay definition of hazardous materials falls more, if I could say it, under things like labour legislation, like workplace hazardous materials information—WHMIS—training that we do. We have standards about how you use different chemicals in different industries. We have all sorts of air emission standards and those kinds of things for different emissions, but the issue of how hazardous materials are handled is also regulated by the Ministry of Labour.

**Ms West:** And your specific example, which would be the transportation of hazardous materials, is regulated at the federal level.

**Mrs Sandals:** OK. This is very specifically, then, hazardous waste. I just wanted to clear that up in my own mind.

Looking at hazardous waste, when we look at the information the auditor has given us, and we've talked about that previously, there's the whole issue around tracking it from the generator to the carrier to the receiver, presumably for the purpose of making sure that it has been properly disposed of. It would appear from the information we've been given that the electronic system really hasn't clicked in because the carriers, if

nothing else, aren't equipped to deal with the electronic reporting part of it. I thought I heard one of you say that in order for the electronic system to work, all three of those have to be hooked into the electronic system.

Just listening to what you've been talking about, it seems relatively apparent that the generators would have the capacity to be hooked in fairly easily, perhaps the receivers, but the carriers are a different sort of cat altogether. Have we considered some sort of linking of the paper system and the electronic system so that somehow you get an electronic report at the beginning and you can then get either paper or electronic follow-up on the carry-through? Because it seems to me that if we're going to track this from start to finish, it's going to be very difficult to move to everybody being electronic. So where are we going with that interaction between electronic and paper?

**Ms Andrew:** Just a couple of things. One is we've also adapted the electronic system so you can key into it by telephone, just to make it easier for the carriers if they don't have an onboard computer. Lots of trucks do have onboard computers, but you can just dial a phone or you can actually use the computer when you deliver the material to the receiver. So we have done a number of modifications.

We're in a series of discussions now, if I can call them that, both encouraging people, offering new training to people, but also getting input on what would make compliance for them with an electronic system easier. We're looking at a wide range of options. We hope to have all the options tied down in the next month or two and then move forward with an action plan. I'm not saying exactly what all the options will be, but we're open to a wide variety of options that will increase the electronic reporting. So it may be a mix of paper and electronic.

**Mrs Sandals:** So this could be as simple as a Touch-Tone telephone?

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**Ms Andrew:** Yes.

**Mrs Sandals:** Because when I see "electronic," I'm thinking you have to have the software to be hooked into the system or Web access to be hooked into something. But this is low-tech electronic as opposed to high-tech electronic. OK, that gives me some relief, because when listening to all this it seemed like it was possibly undoable.

**Ms Andrew:** No. We recognized that early on. We knew we had to have, if I can call it that, low-tech solutions, especially if you are leaving something in the middle of the night at a rural transfer station because you've shifted this far and somebody else is picking it up there. There's not going to be a readily available computer.

**Mrs Sandals:** Which brings up the next interesting question then, which is the rural site which is the end of the line and which is not a proper site. I think Mr Flaherty talked about that as midnight dumping. In rural areas that is a genuine concern. How do we pick up on that and how do we enforce that?

**Ms Andrew:** There's a variety of ways you have to pick up on it, but on enforcement we mostly, to be honest, rely on the enforcement work that SWAT has been doing or that the regional offices have been doing.

**Ms West:** And ultimately, if we have the HWIN system as functional as we want to get it, then that provides a significant amount of oversight, when you know the waste has been generated, when it's leaving a particular location and who the carrier is to deliver it. It does provide a significant amount of information to allow for that type of better compliance and enforcement.

**Ms Andrew:** One of the reasons we make sure all three parties have to be on the manifest is actually for compliance purposes. It's much harder—if I could say it this way—to have collusion amongst three parties, which is what you'd have to do to have the waste get lost; you'd have the generator, the receiver and the shipper.

**Mrs Sandals:** And it's the getting lost in the middle that's the issue.

**Ms West:** We have a fairly effective tracking system, but it would be much more effective the more we can get HWIN and the electronic approach fully implemented.

**Mrs Sandals:** Thank you very much.

**Mr David Zimmer (Willowdale):** I apologize if some of these points have been covered. Just tell me, and I'll back off.

I'm very interested in this whole question of how large institutions, be they public sector or private sector, manage their information technology needs. I preface my question by saying that we've been here now about three weeks hearing from various ministries. Typically, what we hear is that a ministry recognized the need for a technology information review; they committed to doing that; they spent a significant amount of money doing that—in your case \$17 million. The project gets underway, they get well into it, and it quickly develops in the ministry or the private sector institution, whatever, that that investment came to naught, that is, whatever the investment produced didn't match the need, didn't get the job done.

My question is, how are you going to deal with this black hole of technology needs? It seems to me that in the next few years, all the projects you have to tackle, the things you're going to do and are committed to doing, are so tied in with technology information systems. What sort of budgets have you set aside for the next couple of years to tackle this? What are the time frames you've got in mind to get your technology systems up to speed? And the third question: How confident are you that you can really get the technology challenge dealt with so you can deliver on the substantive commitments?

**Ms West:** Let me start off by saying that I also have seen some very large IT systems that start off with good intentions. People think they have thought it through. When you get into the implementation, you discover that it's not as well thought through and in fact there are some difficulties about actually realizing upon the investment that you make for that system.

As I've looked at what's happened within the Ministry of the Environment with respect to these particular

systems, I think the ministry, even in the context of the criticisms and the recommendations from the Provincial Auditor, has been getting very good value for the money and the investment. I think that's because the approach that has been used has been a very rational and logical approach. That is, there is a framework—there's the Environet framework that's Web-based—that one wants to try to adhere to and use so that you can get communication between the various components of the system, but that for each component of the system there's a very focused review and identification of the needs, and then working through those needs to try to make them as practical and real for the situation and the investment available.

We haven't talked about CAMEO as a particular system, but I think certainly the Provincial Auditor noted its very great success. As we look at OnAir or HWIN or DWIS and the other components of DWIS, currently they are getting great value for their investment. HWIN has some difficulties because of a particular assumption about how many of the players would actually use the electronic system, but there are ways to manage that as well.

So I would just start off by saying that I think we do have a suite of systems that have significant compatibility and great potential for the future. As we start to build upon what we have in place, I think the approach will continue to be thoughtful about what the needs are, be practical about what's required first, and tested to make sure that we're getting what we expected to get.

I have a significant amount of confidence that we've got a lot right now and we can get a lot depending upon the investment that's approved for us in the future. So with respect to the next few years, as you can appreciate, I don't know what the budgets will be. Obviously we have our ideas and plans as to what's needed to be able to advance systems in a particular way. We do have within our base, if you will—if we can assume upon the base some assumptions about what's needed to continue some of the enhancements that you've heard described to the current systems, I'm confident that will occur.

With respect to time frames, again I think that's an area in which we have to be quite careful. We have the enhancements to DWIS. I can't remember, Mr Zimmer, if you were here for some of the discussion around that, but we've referenced a few enhancements to the drinking water information system. Those are very specific, those are very doable, those are very affordable, and they'll have real value. I'm quite confident that that will occur within a time frame—summer 2004 was what was described.

So time frames—again, it depends. It depends upon how the need is identified, how large we go and what continues to evolve, both on the technology side and on the program side or the information needs side, as we look to what's needed. So I wouldn't want to presume, and I think this is the trouble that some systems get into.

**Mr Zimmer:** Sorry, I didn't hear.

**Ms West:** I wouldn't want to presume that you know right now what you want in two years' time or what can

be built in two years' time, because a lot of things happen between now and two years out. I wouldn't want to go that far. I think you have to have a general view and then build the systems in a more practical, logical, immediate way, relying upon investments that you can rely upon.

**Mr Zimmer:** How does the ministry go about managing that uncertainty? That's the challenge.

**Ms West:** It is a challenge. I think we start off by making sure that we have taken the time in the immediate with all the right people involved—that's on the IT side as well as the policy and program operational side—to make sure that we've given proper thought to what the requirements are, that we've tried to be as innovative as possible and look for other partners that we can align with or share information with, and to make sure that we've thought that through well.

In terms of the uncertainty, as long as we have our plans, based upon current understanding, in place, those uncertainties around investment and technology are uncertainties that we've been dealing with over the past, few years. Again, I think we're being quite measured in our approach, we're being quite focused in our approach, and I think our chances of success on the systems has been historically true and that we can rely upon that over the next few years. But we're not going to go to some grand, large system eventually, because I think that's where you get into trouble.

1440

**Mr Zimmer:** How much of the planning and managing the uncertainty and getting the pieces in place do you do in-house, as opposed to outsourcing it?

**Ms West:** I may have to ask Mr Gunn to help me with that. Obviously, there are some areas in which we do look for, and on the technology side one traditionally does look for, some support in terms of systems development externally. We do have a number of contracts underway. Allan Gunn is our assistant deputy minister of the corporate management division. Allan maybe can help respond to that.

**Mr Allan Gunn:** In terms of looking forward, in terms of the day-to-day maintenance, by and large that's done by ministry staff. So we have a core number of ministry staff who look after the boxes, the wires and keeping the system going on an integrated basis.

One of the platforms of Environet was to lay the foundation pieces as a building house or as building blocks, so Environet has set up data definitions, has set up parameters, has set up frameworks upon which to build additional models. You use what's already there—like using a set of Lego—to build upon that, to grow forward. The planning and development and the maintenance of that is done by in-house ministry staff.

When we look at developing a module where we need expertise at the time to look at business user requirements, to get the operational needs and bring them together, that's when we look to the marketplace to see who has the expertise out there, who can take the current technology we have in place—the Lego set I talked about—and help us quickly scale and build upon that.

Over the past couple of years, we have used consultant services to develop all of these systems. At the same time, an important component of using those outside resources is to transition that knowledge to the core set of staff we have within the ministry.

In addition to that, the resources within our ministry are clustered in what's called the land and resources cluster, so we have a chief information officer who has responsibility for the public policy area for natural resources, for environment, for agriculture and for northern resources. We all work together in a cluster under the chief information officer so we can also use the expertise of other OPS staff, to bring them and have swing space to move staff between one project and another project as you are building the systems and as the work is going on.

At this particular point in time, there's not as huge an investment in development as there was, say, immediately post-Walkerton, where we had something that had to be done immediately and you needed the people there to design and build it. Now it's more building on the observations and the outcomes of the Provincial Auditor's report. On all the systems that have been identified, it's to streamline them, take efficiencies of the current technology and build on the foundation of Environet that's been set.

**Mr Zimmer:** For the past fiscal, what was your information technology budget? Then what is it for the coming fiscal?

**Mr Gunn:** We don't have a budget for next year yet; we're just in the process of building that from the base up. But our expenditures for 2002-03 were around \$10 million, about \$9.9 million.

**Mr Zimmer:** Of that, how much was spent in-house and how much outsourced, as a percentage?

**Mr Gunn:** I may have some of that here, if you can just bear with me for a second. It looks like around \$3.6 million was used in 2002-03. Approximately \$3.6 million was used for expenditures on IT consultants.

**Mr Zimmer:** Outsourced?

**Mr Gunn:** Yes. IT consultants. Now, there are other services that are bought for other programs, but these particular IT consultants were working on various projects within the Environet system.

**Mr Zimmer:** Going into the next year, I know you haven't set the budget, but have you got any idea how much you are going to spend on managing the information technology?

**Mr Gunn:** The core expenditures—the core staff is in place and the systems aren't going to get any smaller or less complex, so I anticipate it would not be any lower than the current levels of expenditure that we incurred in 2002-03. What I can't build into that is what might happen, what may need to be done. There may be a need, typically, to relook at resources and reprioritize if something happens that we need to respond and get some of the swing space in it. But the other flexibility that we have, being part of a cluster, is working with our other colleagues in natural resources or OMAF to be able to swing resources between the ministries to deal with the pressures of the day.

**Mr Zimmer:** My last question, for my historical record: How did it develop there? How did that come about that we spent \$17.1 million developing various applications and then at the end of the day the auditor says that it didn't do the job? How did it come off the rails?

**Ms West:** Within the context of the auditor's report, I'm not sure it's wholly off the rails. As I've noted earlier myself, I think we've gotten a lot of value—

**Mr Zimmer:** My language may be a bit strong.

**Ms West:** OK. There are some particular shortcomings in the implementation of the systems that the Provincial Auditor noted, some of which, as we have discussed during the day, have been because at the time the auditor did his report these systems were still in development and in implementation, but some of which were a recognition that there was not absolute perfection with the implementation of the systems. So I would say that in terms of some of the specifics that the Provincial Auditor noted, they were things that we had started to work on. Others were areas in which he brought them to our attention and we realized they needed work. Others were in the course of our continuing evolution of the systems.

That would be my summary comment, that these systems the Provincial Auditor reviewed for us and for you were in development and were under transition and implementation, so they weren't completed as of yet. They had the benefit of his recommendations for ensuring their ultimate improvement, but I certainly would say that the value for the investment made is there and we're getting the results.

**Mr Zimmer:** I don't know if this is the right question to you; perhaps the auditor can help me with this. Could I get a list of the \$3.6 million in outsourced consultant expenditures, or is that somewhere in an appendix to the report?

**Mr Jim McCarter:** I'm not sure we have that in the file. We could look. We may have to go back and get that from the ministry, too, the details of each specific consultant.

**Mr Zimmer:** Just of the \$3.6 million.

**Mr McCarter:** Yes.

**Ms West:** We can follow up on that through the Provincial Auditor or the committee clerk.

**The Vice-Chair (Mrs Julia Munro):** I am cognizant of the time. We do have one member of each caucus left, so I'm going to watch the time very carefully. We'll start with Mr Berardinetti.

**Mr Berardinetti:** My question was related to an issue that came up today in the Hamilton Spectator. They reported a fraudulent lab that was fined \$5 million. I don't know if you're familiar with this. I'm sorry I don't have copies to distribute, but I just got this off the Internet, and it seems quite astounding that a company and its sister company were able to operate—it's called Fine Analysis Laboratories Ltd—and basically falsify records to such a large extent.

This seemed to have been stopped, or at least a stick was applied, through the court system. What can we do from the government perspective to (a) prevent this from happening and (b) when it does happen, make sure it doesn't happen again or that those who are involved are properly punished for it?

**Ms West:** I'm going to again ask Joan Andrew to speak to this, because she was in a particular role when this came about. But I think you'll discover that the ministry did have a role in terms of addressing this particular problem as well.

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**Ms Andrew:** We initially had an employee of Fine Analysis Laboratories come to us in early 2001, and we are the people who brought the case to the attention of the Hamilton police. The charges were laid after their investigation, in early 2002.

Let me just back up a bit. From the fall of 2000 the ministry required laboratories that test for drinking water to be accredited. That was initiated in August 2000, and laboratories had until late fall—I believe November 2000—to comply with the accreditation.

There were problems with how Fine's accreditation was being handled by the standards council, and that came to our attention. Then there was this disgruntled employee. We are actually the people who brought it to the attention of the police.

From the time we knew about it, in January or February 2001, we actually determined that they were not doing any drinking water testing for municipalities in Ontario. We knew that. We couldn't go public because of the police investigation. Since the charges were laid in 2002, it would be fair to say that over two full-time-equivalent ministry staff were probably used, working with the Hamilton police to bring the case to trial. There had been laboratory staff, investigators—one investigator involved full-time, and another support investigator and probably four laboratory staff who each worked 10 to 12 weeks with the Hamilton police.

Since February 2002, when the charges were laid that took it broader than drinking water, because at the time we only knew about drinking water—Fine Analysis was doing lots of work for Health Canada, testing vitamins and medicine. But when the charges were laid and the police went in to search, we obtained from Fine Analysis a copy of their entire client list, and I wrote a letter that was copied to about 30,000 organizations in Ontario saying we wouldn't accept any analysis done by Fine for any request to the ministry for a certificate of approval or a site-specific risk assessment or drinking water testing or anything, and that if any work that had been done had used Fine, they had to get the tests redone and resubmit them. Since that time, we haven't accepted any form of analysis from Fine, and from a year previous we know they weren't testing for municipal drinking water systems.

We also prosecuted them, and it's mentioned in the article, related to their falsification of records at Boblo Island earlier. So there have been a number of over-

lapping cases. Our investigators, our lawyers and our lab staff have been working in close cooperation with the Hamilton police.

**Mr Berardinetti:** So very briefly, I guess the best remedy is to ensure that heavy fines—and in this case there's even some sort of prison sentence, although it seems to be house arrest, applied here to some of the executives involved. Do you think that's the best way to prevent others who would get into this line of work from potentially falsifying their records?

**Ms Andrew:** If I could say this from an environmental point of view, I think we have a much more robust accreditation system, in that we now require laboratory licensing and we inspect laboratories. You have to understand that at the time we caught Fine, our accreditation system was no more than two or three months old.

**Mr Berardinetti:** I understand.

**Ms Andrew:** Just to be clear about that, it would be—

**Mr Berardinetti:** It would be caught now.

**Ms Andrew:** It would be caught way earlier.

**The Vice-Chair:** We'll move on to Mr Sterling.

**Mr Norman W. Sterling (Lanark-Carleton):** I'm glad to see so many of the people who were at the ministry when I was the minister still with you—very skilled and professional people. I'm glad to see that a few of them have become ADMs, directors etc. I would have recommended them all.

It's totally off subject, Madam Deputy Minister, but I would like you to deal with the bump-up on Highway 7. I'm losing lives on that road. Your new minister has had it on her desk or in the ministry for over four months. I will not accept any longer delay in terms of dealing with that. I know how fast a minister can deal with those bump-up requests. I cannot stall construction of the four lanes of Highway 7 from Ottawa to Carleton Place any longer. I'd ask you to respond in writing.

**Ms West:** I'll follow up; I will.

**Mr Sterling:** Thank you.

With regard to your Environet, or whatever you call it, I believe it's very important for the ministry to have better information systems. Getting timely, accurate information was constantly a problem, and I think \$17 million is not a lot to spend on the system. I hope it will not only produce the kinds of results we have talked about in the committee today, but will also produce other statistics to show accurately where we as a province stand with regard to air quality, water quality, earth quality, discharge quantities and those kinds of things, so that a minister can stand up and defend what our province has done in the past and what we're doing presently to deal with all those issues. It was forever a frustration of mine that you were never comparing apples and apples and that kind of thing.

One of the concerns I've had with the ministry recently, of course, has been the fact that you are tending to go toward more fines enforcement. I understand the reaction: That's what the environmental groups want, that's what the opposition wants. But that doesn't solve environmental problems.

I guess it was never more painful to me than when I was at ROMA yesterday. I went with three delegations to the minister of infrastructure for this government and was told, "No," with regard to water plants, to upgrading sewage plants, to installing water and sewage plants, to improving a water plant with a certificate of approval change—the requirements of the C of A for the water plant in Carleton Place changed after they had spent \$1.5 million, and now it's changed to something else.

Justice O'Connor came forward with a lot of recommendations. Nobody has taken him on in public, but I can tell you that a lot of people walking around the Royal York yesterday and today have a lot of questions about what Justice O'Connor recommended.

The problem here is that the ministry goes in and fines Smiths Falls \$18,000 for some kind of offence. Smiths Falls is a town that has shrunk by about 300 people, from about 9,300 to 9,000 people over the last 13 years. They don't have the wherewithal to deal with the problem. They apply to the provincial government for help; there's no help. So what do they do?

It's fine to have this new accountability system, it's fine to have the statistics, it's fine to have all of that, but if they're trying their level best to deal with the problem and you're coming with a big stick, that doesn't solve the problem for the people of Smiths Falls or for their representatives who are trying to grapple with financing a new water plant. They're willing to go ahead. They're willing to put in their part of it—perhaps more than they can afford—but the province isn't there.

Some people have estimated that in order to fulfill Justice O'Connor's recommendations, it would cost the province something like \$30 billion when all added together. I don't know whether that's a practical number or not, or whether all the requirements Justice O'Connor put forward are in fact necessary. Not many politicians will say that, because they all want to be motherhood with Justice O'Connor on that.

What unfortunately happened out of Justice O'Connor is that nobody knows who is supposed to mind the store. Is it the province, or is it the municipality? Who's in charge? We have lofty regulations, we have more regulations and we have changing regulations, and we have municipalities of various means and various water supplies and those kinds of things trying to deal with this. We have a whole mix across Ontario as to how water is handled. In Toronto, for instance, I think they test their own water. They have their own testing facilities, as do a number of other large municipalities.

1500

I guess my question to you is, would we not be better, in terms of our provincial responsibility, to lay it clearly on the line, at least to the larger municipalities: "You are responsible to live up to this particular standard. If you get caught, we're going to fine you and we're going to nail you"? We'd do some inspection, but relatively minor, because they're sophisticated enough to handle their problems, but we'd deal with those municipalities that have real trouble, in terms of dealing with their problems. To me, with almost 3,000 people in this business,

private and municipal, we should not be wasting our time, or you shouldn't be wasting your time, trying to understand who's running the plant or who's involved with the plant. I don't understand how the province of Ontario can be responsible, or your ministry can be responsible, for how a plant is run on a day-to-day basis unless you have somebody in there all the time. I just don't understand how you can be responsible for it.

So that's one question I have of you: Do you not think it would be more practical for there to be a division, a clear outlining of responsibility, where your responsibility stops as a regulator? With the bigger municipalities, you say, "It's your baby. You are responsible to your people. A water problem? You are the people who are going to be sued with regard to this. We will set the standards, because we have that ability, but from there on it's your baby."

**Ms West:** Certainly the current legislation does identify a variety of accountabilities. I think it was part of the intention of Mr Justice O'Connor and the regulatory regime that was brought forward that accountability does rest with the province at one level—municipalities, operators, labs etc. So I recognize there is that variety of accountability and responsibility in terms of specific actions under the regulations.

With respect to your specific question about the city of Toronto, for example, and is there a different approach to inspection, just referencing back, we have both the O'Connor recommendation about annual inspection of all municipal water plants and we have the legislation that requires that to happen as well. I think you heard Jim Smith note that we do have a very robust protocol of annual inspections that we apply across the board. We're just into our second year of experience with that protocol and the second year of seeing the results from it.

As we see those results and as we look at where there may be problems, if they're as diverse as larger municipalities versus smaller municipalities or rural versus urban, I think that does help inform us as to that particular protocol and if we need the same robust protocol across the board. My expectation would be—and Jim Smith noted as well—that we would take that review seriously and see what makes sense, recognizing, as you've noted, that we have limited resources to deal with water inspection, let alone any other inspections, across the province.

**Mr Sterling:** One last question, because I know we're out of time: With regard to funding for smaller municipalities, as Miss Churley was relating to before, although I don't know whether Boblo Island or Amherstburg has a problem—

**Ms Churley:** It's been fixed. That wasn't about money, though. It was about getting—

**Mr Sterling:** I know it wasn't about money. I'm not sure they have a money problem there, because I've been on Boblo Island.

**Ms Churley:** No, it wasn't about money.

**Mr Sterling:** But I tell you, they do have a problem with money in Lanark village, where the household family income is less than \$34,000 a year. They're going

to have to come in with a system of \$10 million to \$20 million to put water and sewers in. They don't have potable water in that town right now.

If you come forward with a system—and I don't think you, as the Ministry of the Environment, can duck away from all the financial answers. Your minister, in my view, has to go forward very strongly to her cabinet and say, "We have to deal with these problems, and we've got to be involved in the financial solution." It doesn't do any good for Lanark village to come up with a plan that's going to be \$10 million to \$20 million when they probably can only contribute something like 5% to 7% of the capital cost of it and probably are going to have very much difficulty in funding the operation of it as well when it gets in place, because there are only 450 houses in the town.

I want your minister to impress on her other cabinet colleagues that something like a simple one-third, one-third, one-third formula will not work in the province of Ontario. There are municipalities that cannot provide clean water and have proper sewage facilities and soak up even a third of the cost of it. They are normally shrinking in population. They are older municipalities. They just don't have the financial wherewithal.

I would ask you to look back to a time when I was there, when we had the Ontario water protection fund—\$200 million—where we had sliding scales of anywhere from, I think, a low of 7% to a high of 90% or 92% in terms of funding. Have your minister very much involved in how the structure is set up, because if she's not, what traditionally happens when you have an uncomplicated, simple formula like a third, a third, a third is that those municipalities that don't have financial problems get the advantage of the program.

We've got to get these programs going. If you're sending your people in saying, "You've got to fix this. You've got to fix that," some of these fixes are more than the annual budgets of these municipalities. We've got to get at this. Either that or we've got to change the system of what we're demanding of them. But at some time some municipality is going to come to you with the keys to the door, and that's not too far down the road. I don't think that should happen. I think they want to be part of the solution, and they will be part of the solution. I just ask you to get involved in how this is going to be financed, because if your minister isn't at the table pounding on it, then there are a lot of people who are going to go without clean water in this province.

**Ms West:** Thank you.

**The Vice-Chair:** We are past 3 o'clock, but Ms Churley, I understand you have one quick question?

**Ms Churley:** Yes. It is in a sense a comment, but perhaps leads to a question. It is in direct response. I did raise that same issue about the smaller municipalities.

Mrs Sandals earlier responded to my question about staffing and mentioned the 33, I believe it is, who are right now being hired. I just want to say that this whole conversation today and examination of this actual tiny part of the whole Ministry of the Environment—and we've wandered around a bit—a very, very complex ministry with a lot of complex jobs to do. What we're talking about is almost surreal in the sense that the context in which we're talking about it is after the cut to the ministry, under the previous government, of one third of the staff. There are a lot of different figures going around around how much your budget has been cut, but Jim Bradley said that if you count both the capital budget and the operating budget, you have as much as a 60% cut in the Ministry of the Environment.

So I will urge the members, particularly from the Liberal Party, and especially newer members, to look back on all the reports that were done over the years and have a look at how, when you're fighting for things to come into the next budget that is going to be announced soon, you advocate very hard on more than the 33 staff and the small amount being put back in that ministry, because it and the Ministry of Natural Resources were drastically cut. There was report after report after report, from outside and inside the ministry, over the years saying that the ministry cannot do what it's mandated to do with the existing budget. I know Mr Sterling might argue with me about that, but that is the reality as many people see it, that these 33 new members are just not going to cut it. You probably don't want to comment on that, do you?

**Ms West:** No, thank you.

**The Vice-Chair:** With that, I would just say thank you very much, all of you, for coming here today. We certainly appreciate the expertise that you've brought to the table for us in our discussions.

We will close off the public session and the members will stay back for a few moments to discuss any key issues.

*The committee continued in closed session at 1510.*



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#### Clerk / Greffière

Ms Anne Stokes

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Research and Information Services

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## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 1 April 2004

# Journal des débats (Hansard)

Jeudi 1<sup>er</sup> avril 2004

## Standing committee on public accounts

2003 Annual Report,  
Provincial Auditor:  
Ministry of Finance

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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Thursday 1 April 2004

Jeudi 1<sup>er</sup> avril 2004

*The committee met at 1026 in committee room 1, following a closed session.*

## COMMITTEE BUSINESS

**The Chair (Mr Norman W. Sterling):** As people are getting ready to make their presentation, Ms Martel has indicated to me that she wanted to raise a point of order, so this might be a good time.

**Ms Shelley Martel (Nickel Belt):** Thanks, Mr Chair. Anne will hand out a copy of a motion that I'd like to table in the committee today and would like to debate next week. I'll read it into the record and then just make a small point at the end. It reads as follows:

I move that as per section 16 of the Audit Act, the public accounts committee direct the Provincial Auditor to fully examine the government's intensive early intervention program for children with autism, including, for example:

(1) Why there was no increase in the number of children receiving services—516 children—between June 2002 and December 2003, despite a \$4-million increase in the budget for the program over the same period of time;

(2) Why the cost per client has increased so dramatically from August 2, 2001, to December 15, 2003. For example, in the southwest region the cost per client was \$33,220 on August 2, 2001; \$50,000 on June 1, 2002; and \$76,850 on December 15, 2003;

(3) Why the average cost per child to deliver the IBI program has been estimated to be \$55,000 by economists retained by the Ministry of the Attorney General for the Wynberg/Deskin court cases, while the regional range to deliver IBI per child is \$65,746 as of December 2003;

and that the Provincial Auditor report to the public accounts committee with his findings and recommendations as soon as possible.

Chair, I said at the outset that I'm tabling this now for debate next week. I wanted to give it to members so they would have an opportunity to review it. You know I can be very political on this matter, but I am raising this because I have some information that I do believe would be interesting to the committee and to the Provincial Auditor that I think would clearly show that there need to be some changes made in this program to deal with the waiting lists. This has nothing to do with the most recent announcement made by the minister; it has to do with

some documents that have been released through disclosure at the two court cases. I have some of those documents, and I am very clearly concerned about the cost differentials in the programs between providers and between regions. If we could get to the bottom of it, we might be able to be in a position to actually serve many more children, which is what I want to do at the end of the day. So I would be happy to talk to any members, and I will be tabling some of the documents next week as part of the debate.

**The Chair:** Thank you very much for your advance notice.

2003 ANNUAL REPORT,  
PROVINCIAL AUDITOR  
MINISTRY OF FINANCE

Consideration of section 4.08, gasoline, fuel and tobacco taxes.

**The Chair:** Mr Andersen, welcome to the committee, finally. It's traditional that we give the deputy the opportunity to introduce the people who are with him and, as well, make an opening statement. The microphones will come on automatically. The Hansard reporter will turn them on. The button is to turn them off. That's basically the way it works.

**Mr Colin Andersen:** Thank you, Mr Chair. My name is Colin Andersen, and I'm the Deputy Minister of Finance. Joining me today are Marion Crane, Pauline Goral and Brad Lawrance. Marion is assistant deputy minister of the tax revenue division.

**Ms Marion Crane:** It's Bruce Mitchell instead of Pauline Goral.

**Mr Andersen:** Sorry. We've got people here from the motor fuels and tobacco tax branch and the audit and inspection functions in the branch, and when and if they speak I'll ask them to introduce themselves.

I'd like to thank all of you for the opportunity to come here today, and I also want to say that I appreciate the flexibility you've provided to us in scheduling and rescheduling this appearance.

We're here today to talk about the Provincial Auditor's 2003 follow-up report on gasoline, fuel and tobacco taxes. We propose to give a brief background on our administration of those taxes to set the context for discussing the concerns and recommendations that came

out of the auditor's 2001 value-for-money review and then the subsequent follow-up.

Gasoline, fuel and tobacco taxes are collected under the authority of their respective acts. The primary responsibility for administering these acts comes under the ministry's motor fuels and tobacco tax branch. By way of comparison with other taxes that are under the ministry's purview, these commodity taxes totalled roughly \$4 billion in fiscal 2002-03, as compared to about \$18 billion for personal income tax and \$14 billion for retail sales. These petroleum and tobacco taxes are levied at a set rate per unit—for example, 14.7 cents per litre of gas—and are considered, and are, a direct tax on consumers.

Although these are direct taxes, we administer a taxation program whereby accountability for the products is established more upstream of the eventual purchases by consumers, primarily through large distributors of the products—what we refer to as collectors. In other words, the oil companies and the tobacco distributors, which are designated as collectors, pay tax to finance up front and subsequently collect the tax after the fact from the ultimate consumers of the products. We also register manufacturers, importers and exporters, thus establishing accountability for the products throughout the entire distribution chain.

The auditor's 2001 value-for-money report expressed concerns in a number of areas in regard to the adequacy of the ministry's information to ensure that all taxes due were being paid in accordance with the statutory requirements. We're pleased to see that the auditor's follow-up report, under discussion today, recognizes that the ministry has made substantial progress in addressing these concerns.

In several instances, legislative change was needed in order to make progress, and we have made a number of those amendments and corresponding regulations associated with them. Administrative policies and procedures have been examined and were changed where necessary, and work continues in the ministry, as detailed in the most recent update we provided to the committee.

We'd like to turn now to the content of that report, which follows along with the format of the auditor's report, starting first with fuel, then we'll go into tobacco and finally there are some more general areas.

With regard to fuel production, the auditor's position was that accountability for potentially taxable products should be established as far upstream as is practicable, and we certainly agree with that. For a variety of technical reasons, the upstream point of first accountability occurs at the refinery production level, where refined gasoline and middle distillates come out as finished production. In consultation with other provinces, with the Canada Customs and Revenue Agency, with the US Internal Revenue Service and with the industry, our ministry resolved a number of technical and administrative issues around capturing this point of upstream accountability. Legislative support for this broader reporting framework was achieved through amendments to the gasoline and fuel tax acts, which passed in 2003.

Regulations that prescribe return-filing and record-keeping requirements were recently filed—February 27, 2004—and manufacturers will commence reporting to the ministry in August. I believe we also provided the bulletins associated with those to the members of the committee.

The auditor also expressed concern around the movement of tax-exempt fuel between collectors. Again, this is not an issue of collectors not paying tax, but rather the concern is about accounting for the exchange of products that will eventually be taxable at the time of sale to consumers.

Recognizing that there are a number of technical difficulties in accounting for these tax-exempt transactions, the ministry collaborated with the Canadian Petroleum Products Institute to form a working group with a mandate to resolve the problem. The working group has determined that exchanges, known in industry parlance as swaps, are tracked in detail in the industry's marketing systems.

There's a time difference between resolution of the exchange contracts in the marketing systems and the due dates for the tax returns, thus resulting in the apparent differences that were noted by the auditor. At the most recent meeting between the ministry and the industry, in December 2003, industry agreed to provide after-the-fact reconciliations on a regular basis, which will resolve any apparent discrepancies as regards these swaps. The ministry is currently finalizing a bulletin and a guide, which will resolve the final few outstanding technical and reporting details.

As previously stated, imports and exports of fuel are administratively tracked as part of fuel accountability. Administrative procedures have been tightened up to improve reporting and tracking of the various parties involved in importing and exporting. Additionally, legislative changes through Bill 198 now provide better sanctions for enforcement when they're needed.

The auditor also noted shortcomings in the processes and procedures whereby the ministry gives tax relief to exempt consumers. The vehicles for providing relief take the form of refunds for gasoline taxes and acquisition permits for fuel taxes.

The ministry's refund processing is a high-volume, manual vetting system that monitors and approves incoming claims. Staff resources are assigned to those areas where we perceive the risk of tax loss to be greatest. Where the ministry finds instances of ineligibility, we take compliance action as warranted. Controls over the acquisition of tax-exempt fuel through acquisition permits have been strengthened through a combination of field enforcement and desk-audit strategies.

Moving on to tobacco, the auditor's concerns have been taken to heart and actioned accordingly. Two primary concerns around manufacturing were expressed: first, again around upstream accountability for manufacturers' production volumes, analogous to the refiner situation we were just talking about; and secondly, in regard to accounting for the tear tapes that are found on cigarette packs.

We continue to review production information as detailed on manufacturer returns by desk-audit analysis. Federal information is also compared to information submitted by the tobacco manufacturers. Ontario has also coordinated and executed field audits with other provinces. We are confident that registered manufacturers are being held accountable.

I would also note that amendments to the Tobacco Tax Act proclaimed for July 2004 will further enhance accountability at the manufacturing level through control over cigarette-pack tear tapes. These amendments are the result of the efforts of the national tobacco marking steering committee, which is chaired by Ontario.

On the downstream side of the tobacco business, the ministry has reinforced reporting requirements with both importers and exporters. Co-operation continues with the former Canada Customs and Revenue Agency, which is now two federal agencies: the Canada Revenue Agency and the Canada Border Services Agency. As detailed in our status report to the committee, our efforts continue to strengthen controls over transporters of tobacco products.

As indicated in the auditor's report, a population-based allocation system is in effect for status Indians, whereby a sufficient quantity of tax-exempt cigarettes is provided for sale on reserves in the province. In fact, the process of implementing cigarette allocations has just been completed in January this year, as the last remaining reserve in the province was formally allocated.

With respect to cigars, we continue to review the need, legal basis for and practical implications of an allocation system for cigars, as suggested by the auditor.

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I'll now turn from the commodity-specific concerns to other issues that were raised by the auditor.

The Provincial Auditor was concerned about exempting certain fuel, gasoline and tobacco tax registrants from the statutory requirement to post security, based on an administrative policy which had grandparented existing registrants from the security requirements when they took effect in 1992. The ministry has reviewed its policy and we've decided to end the grandparenting. At the same time, the ministry is going to consider reducing the amount of security required of all registrants to an amount that is more in line with actual risk. Notification of this policy change was published by way of a bulletin issued last month. We are currently engaged in the process of determining how this new policy will apply to each registrant. There are now about 200 registrants subject to the new security requirements. The current communications plan would see the ministry making each registrant aware of the impact that this new policy will have on them by mid-year.

With respect to the audit and inspection functions for petroleum and tobacco taxes, the ministry completed initiatives and process at the time of the 2001 review to strengthen our audit procedures. Efforts continue to enhance and maintain professional audit standards in all of our tax branches throughout the tax revenue division under several strategic initiatives. The auditor's com-

ments are valued and reflected in these initiatives. Field inspections have been strengthened through better use of technology and recruiting of two permanent managers in the inspections unit. The question of whether additional inspectors are to be added is being weighed against other enforcement priorities. In the meantime, the ministry is participating in the Inspections, Investigations and Enforcements Secretariat, one of the objectives of which is to leverage enforcement personnel across all ministries in the government. We are exploring new and creative ways to more effectively apply our enforcement resources.

Finally, the ministry fully concurred with the auditor's recommendations as regards the importance of using information technology and developing appropriate effectiveness measures, and has implemented management information systems, as detailed in our report to the committee.

In summary, we'd like to thank the Provincial Auditor for his recognition of our substantial accomplishments, as reflected in the follow-up report. We'd be pleased to take any questions that you might have.

#### **The Chair:** Questions?

**Ms Martel:** Thank you for being here this morning. Can I just move to point 12 on the document that you provided to us. You described a little bit of the business re-engineering process. I have to admit that I don't understand what that means. Can you give me some idea of what that entails in terms of how it responds to the auditor's concerns?

**Mr Brad Lawrance:** I'll respond to that. I'd like to introduce myself. I'm Brad Lawrance. My job title is senior manager in charge of audit and inspection in the branch. I've lived with the re-engineering project for a little while, so I think I can describe it.

The motor fuels and tobacco tax branch encompasses not just three different petroleum and tobacco statutes, but a number of other statutes. When I was an internal auditor in the old Ministry of Revenue, my biggest nightmare was to come into motor fuels because I had to audit all these statutes.

The purpose of the re-engineering project was to present one window to our clients, regardless of which statute they registered under or what kind of registrant they were. It's an information platform that allows our front-line staff to interact with persons calling in, walking in or contacting us for any kind of tax matter and being able to speak to that client on a variety of issues and statutes, whatever their concerns might be. It's to take a bunch of different silos, as is the current buzzword, and combine them into one window for the client.

**Ms Martel:** Did you have to make changes in computer technology as well?

**Mr Lawrance:** Yes, very much so. It's a mainframe system that required movement from old legacy systems, COBOL-based mainframes right down to small, PC desktop applications. You combine all the information to take the bedrock data from those systems, do all the reprogramming and provide that window for the clients.

**Ms Martel:** Is it actually complete?

**Mr Lawrance:** Yes, the project is complete. We'll probably always be providing enhancements to that, most particularly because of new legislative situations that arise, new initiatives that have to be programmed into the system.

**Ms Martel:** On your page 10 of 15, when you're talking about the security, how do you determine the amount of security from a registrant?

**Ms Crane:** I'm Marion Crane, assistant deputy minister of the tax revenue division. There are legislative requirements for security right now. We have discretion of what security we require from different collectors. It's a risk-based system. We're looking at the collectors with the higher risk posting more security. We look at such things as the time frame for the collectors getting the tax money into us. We base security on a number of factors, and we relate it to the risk of tax loss.

**Ms Martel:** Can you give us some examples, some ranges?

**Ms Crane:** Bruce, do you want to give some ranges of that, the numbers?

**Mr Bruce Mitchell:** Yes. Bruce Mitchell, senior manager, tax advisory and motor fuels. Just for example, on a fuel tax collector the legislation requires that security be in an amount equal to an average of three months' tax or \$1 million, whichever is greater. The legislation further provides that the minister has the authority to increase or decrease that amount. So the legislation, in that three months' tax or \$1 million, is essentially giving us a benchmark from which to start. As Marion has indicated, we're now in the process of looking at that benchmark and whether it should be moved, whether the actual security required should be moved up or down, trying to take into account much more closely the actual tax at risk.

**Ms Martel:** Have most of your registrants purchased security, ie were they outside of the grandfathering clause and had security, or is it the reverse, that most of them will now have to pay the security?

**Mr Mitchell:** There are roughly 200 registrants that will be subject to security, and at the moment we have security from approximately 120 of them. So we're looking at obtaining security over the next several months from those additional 80 or so.

**Mr Mike Colle (Eglinton-Lawrence):** The question I have is with regard to this peculiar thing called yellow tear tape on cigarette packages. Not being a smoker, I'm just wondering, what's the status of this tear tape? Is it an effective way of ensuring that the cigarettes that are sold and consumed here in Ontario have this tear tape on them?

**Mr Lawrance:** Perhaps I could speak to that, being in audit and inspection. I actually brought a sample today of a cigarette pack for any non-smokers in the room. I can pass it around if that's convenient.

The yellow tear tape is an adhesive strip that goes underneath the cellophane wrapping on the cigarette pack. There's some indicia, some markings on this tear

tape, that are specified by law. It must say "Ontario tax paid," and it also includes an indication of Canada tax paid. When we see a yellow tear tape on a package of cigarettes, it means to our inspectors that Ontario tax has in fact been paid and it's a legitimate product that's on the shelves in the market. Each province in Canada has a different coloured tear tape, so that we can tell for which province the cigarette was produced and is therefore legitimately for sale. It being that provinces have differing tax rates, this is an important visual indication of tax compliance.

The tear tapes themselves previously were loosely held under the cellophane. There's been some enhancements to make them more effective, including making them sticky so that they are ruined when they're taken off, thus alleviating potential counterfeit problems. The tear tapes also provide covert markings that inspectors can access in order to determine whether or not they are legitimate tear tapes.

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**Mr Colle:** Have you got any recent indication that there might still be some counterfeiting of this tear tape or is it still easy to get around it?

**Mr Lawrance:** We do have indications of counterfeiting that have been in the news of late: The RCMP seizures of counterfeit cigarettes in Vancouver and Toronto. That's in the public and in the press. There hasn't been too much incidence of that yet.

We have just recently implemented new regulations, following February 27, that make manufacturers more accountable for the acquisition, storage and use of these tear-tapes, and the licensees and suppliers of these tear tapes. We're trying to make sure that those dealing in these are legitimate players in the market.

**Mr Colle:** Just one last question: I guess the key to having counterfeit, bogus cigarettes is trying to copy and get hold of these tear tape facsimiles or get them in an underground manner. I guess it's critical to keep the integrity of the tear tape.

**Mr Lawrance:** It is critical to keep the integrity of the tear tape. As far as counterfeiters are concerned, tear tapes are not the only things they are adept at counterfeiting. Just as with currency, whenever there's an opportunity, there are persons who are very entrepreneurial in terms of providing and designing counterfeits.

**Mr Andersen:** We put out a bulletin at the beginning of March, and there are just a couple of highlights we should draw to your attention. I think we did send these over to the clerk. I'm not sure if they were distributed. They are obviously available on the Web site, and the like, but there are a few key points just to highlight.

**Mr David Zimmer (Willowdale):** This is a question looking into the future. When you go through the report, there were a number of glitches or anomalies and that sort of thing. When this two-cent-a-litre gas tax is going to be passed on to municipalities, to ensure that we don't have to come back next year and talk about embarrassments on this, how is that going to play out administratively? What are the plans, so that that works well?

**Mr Andersen:** The form, design and implementation of that specific commitment have not actually be finalized. It's a commitment to share 2% of the existing gas tax with municipalities. The allocation of that is also to be determined. Really, all we can say at this stage is, stay tuned.

As you are aware, there is a federal commitment as well. Discussions at both senior levels of government about how those commitments could be implemented are going to involve discussions among all three levels. I can't really answer the question specifically at this point, because the discussions are yet to get going on the very detailed design of it.

**Mr Zimmer:** Just a follow up: Let's assume that the governments have to settle what they have to settle. How quickly can you folks get up and running?

**Mr Andersen:** It really depends on exactly how that commitment is implemented, depending on whether it's an allocation among municipalities or more of a process whereby it would be collected and distributed at the point of sale.

**The Vice-Chair (Mrs Julia Munro):** We'll go to Mr Sterling.

**Mr Norman W. Sterling (Lanark-Carleton):** Along that vein, is it your understanding that the two cents they're talking about here is in terms of gasoline, or is it gasoline and diesel? Because there's a big difference. In 2001, they raised \$2.3 billion in gasoline tax and \$0.7 billion in diesel. Is there any clarification on that at all?

**Mr Andersen:** I think we'll have to get back to you on that.

**Mr Sterling:** If it was two cents—the number we have is \$2.3 billion. That was in 2001. Is that number bigger now?

**Mr Mitchell:** If I might step in here, I have the table from the 2003 budget, which shows gasoline tax—this was interim at that time—as 2.3 for 2003.

**Mr Sterling:** So it's the same as in 2001? There hasn't been an increase in usage?

**Mr Jim McCarter:** The figures we provided—the 2.2 was for the 2003 fiscal year, and I think that agrees with the number you have.

**Mr Sterling:** OK. Now the tobacco tax, the 1.2 number.

**Mr McCarter:** The 1.2 is for the 2003 fiscal year.

**Mr Sterling:** OK. How does that split out? When was the increase in tobacco tax taken? What was the effective date of that?

**Mr Andersen:** The most recent increase, you mean?

**Mr Sterling:** Yes.

**Mr Anderson:** In November. There was a \$2.50-a-carton increase in November, and then Quebec followed in December.

**Mr Sterling:** So the projection for 2003, prior to the tobacco tax increase, was what? And what is it going to be in the end?

**Mr Andersen:** If you'd like, what we can get is the most recent Ontario finance figures. There were the figures in the budget that were obviously before the

increase that occurred in November, and then Ontario finance would have a projection.

**Mr Sterling:** What did you collect in tobacco tax for the first half or three quarters of the year? What did you collect in tobacco taxes to September 30?

**Mr Andersen:** Well, if what you're wondering is how much the annual per carton increase will be—

**Mr Sterling:** Yes.

**Mr Andersen:** We're estimating that it would be about \$140 million in tobacco taxes in a full year. Obviously it was implemented halfway through the year.

**Mr Sterling:** I guess I'm a little confused, in that I think we were told by the auditor that there was a four-fold increase, from 2.6 cents a cigarette to 9.8 cents a cigarette. How would it only be a \$140-million increase in a year when the total revenue is \$1.2 billion per year in tobacco taxes? Some numbers are not adding up here.

**Mr Andersen:** There's an interaction between—when the price goes up, consumption can go down, and whether or not we get back into a zone where there's greater exposure to any smuggling problems. We've talked about some of the measures that have been put in place to counter that.

**Mr Sterling:** But let's take it that if consumption stayed the same and you had adequate controls—we were told that the tobacco tax was \$1.2 billion. Is that correct?

**Mr McCarter:** Yes, \$1.2 billion for the 2002-03 fiscal year.

**Mr Sterling:** So the tax went up fourfold. I would have thought simple mathematics would have been four times that number.

**Mr Lawrance:** Perhaps I could speak to that point. The information I have is that the tax per carton of cigarettes was \$17.20 in June 2002, and it went up to \$19.70 in November 2003, so just over a one-year period, which equates to about one cent per cigarette. I think that fourfold increase relates to the earlier figures back in 1988, from which there has been a dramatic increase.

**Mr Andersen:** When was the base that you were talking about to start with?

**Mr Sterling:** Something's not adding up here.

**Mr McCarter:** We were discussing the amount of the tax increase before you came in. I think one of our staff had phoned someone at the ministry, because we thought we might get asked the question, and they indicated that over time it had gone from 2.6 to 9.5. But I don't have the base year jotted down here, so we'd have to check into that—

**Mr Lawrance:** That would be November 6, 1999, when it was 2.65.

**Mr McCarter:** OK.

**Mr Sterling:** So it has been going up even prior to what they did in November?

**Mr Lawrance:** Yes.

**Mr Sterling:** So in November it was \$140 million, and this tax year, then, we can expect an increase of about a quarter of that \$140 million, so an increase in revenue in your bottom line of about \$35 million or something like that?

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**Mr Andersen:** For the remainder of this fiscal year?

**Mr Sterling:** Yes.

**Mr Andersen:** We would have to see whether that price increase is having a noticeable impact on consumption and return of any smuggling activity. It's a little early at this stage to be able to tell that.

**Mr Sterling:** So if we're going to collect \$140 million more a year in tobacco tax, what is the ministry doing in terms of—are you hiring more inspectors? As the tax goes up, there's a greater tendency for more illegal activities to take place. Is there an increased investment in making sure that this doesn't happen?

**Mr Andersen:** In general, and as I alluded to before, we have to balance off the resources that we have against all of our enforcement activity across all of our revenue sources. Marion, maybe you want to speak specifically to it.

**Ms Crane:** Our audit inspection and investigation functions work closely together to detect any smuggling activities. We also work closely with other provinces and the federal government because, of course, this is an issue that affects us all. We look at how we can put in measures to prevent smuggling under various underground economy initiatives that we look at. Any incidences that we come across of contraband tobacco activities are met with appropriate assessments, fines, penalties, whatever we can do under the legislation. I think the most important part is that we work together with our partners and make sure that we're sharing information and addressing the problem as soon as we become aware of it.

**Mr Sterling:** Can I ask one other question? The two cents promised the municipalities: What would that mean in this taxation year or in terms of what they would be receiving from the province, notwithstanding you don't know how that would be distributed or whatever?

**Mr Andersen:** Maybe we could endeavour to get back to you on that one?

**Mr Sterling:** OK. As well, whether or not that includes the diesel.

**The Vice-Chair:** I'd just like to ask the auditor to clarify some issues around our current discussion, particularly in the area of tobacco.

**Mr McCarter:** Perhaps to provide some perspective on the numbers, in 2001, tobacco tax receipts totalled \$493 million, and that was where cigarettes and cut tobacco were taxed at 2.65 per cigarette. In 2003, the number we have is \$1.2 billion, which I think agrees with the number you mentioned previously. So that gives you an indication of the increase over the two-year period.

**Mr Sterling:** What was the budget document number in May 2003?

**Mr McCarter:** The budget number is probably better directed to the deputy.

**Mr Mitchell:** The interim figure in the budget for 2002-03 for tobacco I have shown here from the budget booklet is \$1.215 billion.

**The Vice-Chair:** Thank you very much. We'll move on to Ms Broten.

**Ms Laurel C. Broten (Etobicoke-Lakeshore):** Mr Sterling asked a number of my questions, but I just wanted to follow up on whether or not, following the tobacco tax increase in November, we've seen any effect on the ability to collect that tax increase—I guess the tax component, including the increase.

**Mr Lawrance:** The ability to collect, meaning—I'm not sure what impediments might get in the way of collecting it. There are some impediments, but I'm not sure which ones you'd like us to speak to.

**Ms Broten:** I guess all of the impediments that may be out there, and whether or not there's a correlation to an increase in the taxation, whether that is creating any effect.

**Mr Lawrance:** Of course, our registrants continue to collect tax and remit as normal. We have them compliant with the system. It's a little too early to say what, if any, effect this last increase has caused on smuggling or counterfeiting. We have anecdotal information that I've mentioned previously regarding RCMP seizures. We are working with the partners that Marion mentioned to try to detect any smuggling that might be impediments in the way of collecting the tax, but it's simply too early to see how this has washed out from the November increase.

As regards regular streams of tobacco collection, we're encountering no difficulties that are abnormal.

**Ms Broten:** Is there historical information that you can relate as to the cause and effect associated with the tax increase and the collectability of the taxes, previous increases in taxes in which you can look at that information and transpose it out?

**Mr Lawrance:** The stark example would have been the tobacco increases in the early 1990s that led to a smuggling problem. I think most folks are well aware of that. The tax increases did contribute to that channel of smuggling. That was the most overt example we know of.

Since that time the federal government has put an export tax on cigarettes to prevent that from happening again. It appears to be working effectively. We're keeping an eye on it, working with the CRA to monitor it. Of course, that's not to say there won't be other avenues appearing in the near future or as prices go up. There is a correlation between the incentive to indulge in the contraband market and the level of taxation; that's a simple economic equation. Our job is to make sure that does not happen.

**Ms Broten:** Have there been any increased mechanisms put in place to ensure that does not happen as a result of the latest tax increase?

**Mr Lawrance:** There are a number of investigative projects underway that of course we can't speak to in detail here that are of the nature of joint forces operations with other agencies and in-house, in audit, inspection and investigation. So the answer is yes, we are trying to make sure that we're ramped up to respond to a potential threat.

**Mr Andersen:** Maybe I can just add a couple of things. I would caution about trying to draw parallels with history, because obviously over time things have

changed. The market has changed. There are a number of different measures that have been put in place by both the federal government and the province to combat the smuggling problem. As well, societal attitudes toward smoking have changed even in the last 10 years. So you can't always extrapolate from the experience of the early 1990s, when there were some of those high taxes and then a tax decrease, to the situation that we're in now. Hence, the answer about it being a little bit early. We are certainly keeping our eyes open and monitoring to see whether we're seeing any up-tick in activity and whether there's anything with regard to the volumes that we're seeing.

As well, just the other part of your question, the tear-tapes that we were talking about earlier, for example, are mechanisms that are being put in place—strengthened mechanisms, if you will—to get at some of those same kinds of issues.

**Mr Richard Patten (Ottawa Centre):** I'd like to follow up on the issue of field inspections. The auditor had given an example. In the GTA, apparently, there is one inspector. How that person can function—he or she must be an exceptional individual to cover that territory. Given the increase in prices on gas, on fuels, on tobacco and everything else that interests certain factions to become involved in looking for ways to avoid paying the required taxes, of course—and we've seen this as a general pattern in other ministries in terms of inspections. When the message gets through, somehow the commercial sector gets a little lax, and some aspects become a little more lax and they don't take seriously the compliance requirements because they know the inspectors are few and far between. So the potential for the estimate of the variance of what would be 100% of compliance in dollar terms and the investment of inspectors—making the assumption that a certain degree of inspection really does do the job.

I heard a passing comment being made that, "Well, we have to work within our resources," and of course that's always true. Sometimes those resources are not adequate and sometimes certain resources are an investment. That gives you a better payoff and more than pays for the addition of X number of inspectors. Would you care to comment on that?

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**Mr Andersen:** Sure, I'll start off and then Marion might want to add some more specifics. We do have to balance off our resources against the payback, if you will. Our whole inspection and taxation process rests largely, in part, on the concept of voluntary compliance, in encouraging people to do that with regards to making it as easy as possible for them to remit. We also are looking at a more risk-based approach to our investigation and enforcement activity, trying to identify those areas where there might be a higher probability of somebody not remitting taxes that are owing. That way—we can focus our resources most strategically.

Marion, do you want to add anything to that?

**Ms Crane:** What you said is certainly the direction we're going in. We always have to look at what our

return on investment will be for all of these enforcement people across all of our programs and where is the best place to put our resources. We're looking, as the deputy has mentioned, at all of our approaches to be more risk-based, and looking at what we can do because we know that every dollar we can spend to have voluntary compliance is much more cost-effective than having to go out afterwards and find these people through inspections or audit or special investigation. Yes, we're looking at what increased resources we need, balancing that with other requirements in other areas as well.

**Mr Patten:** Are there any plans for any additional inspectors?

**Ms Crane:** We're looking at that, yes.

**Mr Patten:** You're examining that right now?

**Ms Crane:** Yes, we are.

**Mr John Yakabuski (Renfrew-Nipissing-Pembroke):** I apologize I wasn't here earlier to hear your presentation, but it couldn't be avoided. I do want to ask some questions on tobacco. I know that Ms Broten and Mr Patten have asked some of those, as well as Mr Sterling. You alluded to the fact that with increased taxes, even though societal attitudes may have changed, human nature hasn't changed. We are looking at a situation where there is a greater propensity for smuggling and illegal activity to go on. I certainly have seen that in my own constituency. The number of complaints from business people with regard to the number of illegal cigarettes out there has escalated dramatically.

When you look at revenues that have gone from—I didn't write down the numbers—\$400-some million to over \$1 billion in cigarette taxes, of course that's a tremendous encouragement to conduct these kinds of activities. I think it would be important to ensure that, if that kind of revenue is being created, investment in investigations is in keeping with that. I certainly hope that there's a commitment to see that happen.

Is there a way of measuring? If the number of yellow-banded packages of cigarettes—the taxes-paid cigarettes—is going down, how do we tell it's because of, as you've talked about, societal changes? Some people will keep smoking despite higher taxes, but others will look for an opportunity to smuggle the product. How do we measure that, or is there a way of measuring that?

I've had people bring specific complaints about illegal tobacco in my riding and I've turned them over to the people at Canada Customs and Revenue. So that is ongoing. I wasn't aware that there were people in our government that we could report to. I would like to have that information as well because it is an issue in my riding.

**Mrs Liz Sandals (Guelph-Wellington):** It's coming across the river?

**Mr Yakabuski:** No. I'm not an investigator, but the speculation by retailers in my riding is that it's coming through the Pikwakanagan Reserve.

**Mr Andersen:** One general comment to start off; people are probably well aware of this. Obviously, the tobacco tax increase can result in smuggling, but the

price increase also serves as a powerful incentive to get people to stop smoking, or not to start, particularly among the young.

The government-wide approach is to try to strike the right balance, having an anti-tobacco strategy that has all of the various elements in it, including the initiatives of the Ministry of Health with regard to public education and the like.

With regard to the structure of our units, maybe you can respond.

**Mr Lawrance:** I think I can respond to a couple of the questions that were asked. One was, how do we measure non-compliance? How do we measure the reduction of the amount of yellow tear-tape to legitimate product that's out there?

We in the enforcement business use a number of different indicators. Of course, we look to see how much tobacco revenue is going in and how many cigarettes are being produced and put out onto the market. When there is a tax increase, classic economics would tell us that, because of the elasticity of demand, the reduction we see is completely attributable to reduction in smoking. I think that's what our friends in the health department are prone to believe.

We look to see whether that's true or not by looking at other indicators, such as, what are our inspectors seeing out in the field? What's being reported to them by retailers and individuals? What kind of anecdotal evidence do we have, such as thefts and store break-ins to steal cigarettes? What information is coming our way that might lead us to believe that the decrease in legitimate yellow tear-tape parked on the market is not completely attributable to a decrease in consumption?

We work together, of course, with the CCRA, with other provinces and with the Internal Revenue Service in terms of getting information that helps us to form an opinion as to what is happening.

We know that there is, to some extent, legitimate product on the market. Our job is to try to control that to the largest extent that we can. Complaints will sometimes arise; for example, when product that is not yellow tear-taped, product that is meant for consumption of status Indians, makes its way off-reserve into the legitimate market. That used to be much more of a problem than now when we have an allocation system in effect. When we finally completed the loop on that in January of this past year we made big inroads on that kind of tax leakage, as we call it.

Our information is a combination of statistics and anecdotal information and tips.

**Mr Yakabuski:** I'm aware there is an allocation system and it's based on every citizen on the reserve, I believe. Anecdotal evidence notwithstanding, if a particular retailer would be reporting that their cigarette sales were down to less than half of what they were, it would be hard to assume that the light went on in that many people's heads and they decided to quit smoking in that short period of time. With that kind of evidence, I guess it would warrant some kind of investigation.

The question I have is--so I can understand a little better, because I get these questions--do you have any responsibility or authority, or is that strictly a federal matter if their concern is that it's coming through a native reserve?

**Mr Lawrance:** Our enforcement policy is that we expect all players in the market to comply with provincial policy, although it's the federal people who exercise jurisdiction in the reserves and that's why we try to work with them. We are constantly addressing the kind of issues that are alluded to, and we expect compliance regardless of whether on-reserve or off-reserve.

I think I failed to address a previous point, and that was that we have provincial people, inspectors in the field, assigned to specific patrol areas across the province. We would be most pleased to provide that contact name for constituents or MPPs to contact for information or for enforcement information.

**Mr Yakabuski:** I would appreciate that. Thank you very much.

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**Mrs Julia Munro (York North):** I wanted to address a couple of issues. The first one is with regard to point 11 on the sheets that you've provided for us. As you explain here, you are moving from what are manual forms to computer-based planning. On the last one, point 12, where you are talking about the business re-engineering, I wondered if you could give us a sense at this point of how you would estimate the differences in the cost associated with providing the kind of manually based system you have today as you move to a computer-based planning system. How is that going to impact in terms of the cost of the services you provide here?

**Mr Lawrance:** This is with respect to the management information system for inspections, I believe, in point 11. This is a considerably different investment requirement than is referred to in our re-engineering program. That was a branch-wide, large-scale technology platform. Within the inspection system, the kinds of automation we're talking about can be accomplished through simple desktop or server applications. The difficulty is the logistics of getting the information correctly on a database and then using it. It's not worth the cost of the resources to do it. So we do not expect to have a high incremental cost in order to automate some of these things.

**Mrs Munro:** But presumably, if it's that much more efficient and so forth, there would be some benefits in terms of the cost of the delivery of that service. Is that fair to assume?

**Mr Lawrance:** There are some benefits in terms of the cost of delivery. The primary reason we are concerned about a management information system is to tell us what the inspectors are doing and where they are being most effective. One of the side benefits of that system is that we can feed information to inspectors on the road in electronic format very quickly. In that sense, yes, it will be a savings. They don't have to call in for information; it can come off the system and be sent to

them immediately and, in the new world, maybe in a wireless environment, so that inspectors have real-time, secure, encrypted information to use for enforcement on the spot. Yes, there will be savings in terms of process and the hoops we are required to go through now to get the job done.

**Mrs Munro:** On a totally different tack, I wonder, are there any new programs for tobacco farmers? We've talked about the initiatives to reduce the amount of smoking in the province and I just wondered if, as we were taking away on the one hand, we were providing some support on the other?

**Mr Andersen:** The Ministry of Agriculture has been working with tobacco growers, and there is a round table, which is a government industry group, that was established by Agriculture Canada back in October 2003. They are looking at those. It's a work in progress at this point.

**Mrs Munro:** From that, is there any suggestion you would be familiar with that there would be a purchase-of-tobacco quota or any kind of investment in that area from the increase in tobacco revenue?

**Mr Andersen:** I know there are a lot of suggestions on the table; I am just not aware of how far along that has

come. There wasn't anything specifically in the federal budget talking about it as far as I'm aware, but discussions are continuing. The examples you are talking about are some of the ones that people are discussing.

**Mrs Munro:** Does this round table include other provinces besides Ontario?

**Mr Andersen:** I believe so.

**Mr Lawrance:** Yes, I think we've had a few details from our colleagues in agriculture and food just recently. Quebec is engaged in that round table, as is Ontario, along with the feds. I'm not sure about other provinces, but one of the explicit objectives of that round table is to discuss transitioning of farmers to other crops in the face of the decreased demand that's projected.

**The Chair:** There being no further questions, thank you very much. We appreciate your attendance. If you would respond within a reasonable period of time—let's say three or four weeks—to any questions that were asked here and if you would like to provide clarification, our research officer will be in touch with you with regard to that information.

*The committee continued in closed session at 1126.*

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First Session, 38<sup>th</sup> Parliament

# Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

## Official Report of Debates (Hansard)

Thursday 8 April 2004

## Journal des débats (Hansard)

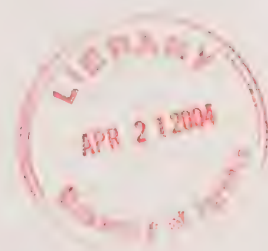
Jeudi 8 avril 2004

### Standing committee on public accounts

Intensive early intervention  
program for children with autism

### Comité permanent des comptes publics

Programme intensif  
d'intervention précoce  
auprès des enfants autistes



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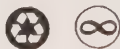
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Thursday 8 April 2004

Jeudi 8 avril 2004

*The committee met at 1006 in committee room 1.*INTENSIVE EARLY INTERVENTION  
PROGRAM FOR CHILDREN WITH AUTISM

**The Acting Chair (Mr John O'Toole):** The public accounts committee is now in order. Our first order on the agenda is a notice of motion filed by Ms Martel.

**Ms Shelley Martel (Nickel Belt):** Mr Chair, I just need some clarification from the clerk. Do you need me to read this motion into the record again? Yes. Let me start with that, then.

I move that as per section 16 of the Audit Act, the public accounts committee direct the Provincial Auditor to fully examine the government's intensive early intervention program for children with autism including, for example:

(1) why there was no increase in the number of children receiving services (516) between June 2002 and December 2003, despite a \$4-million increase in the budget for the program over the same period of time;

(2) why the cost per client has increased so dramatically from August 2, 2001, to December 15, 2003, (example: in the SWR, the cost per client was \$33,220 on August 2, 2001; \$50,000 on June 1, 2002; and \$76,850 on December 15, 2003);

(3) why the average cost per child to deliver the IBI program has been estimated to be \$55,000 by economists retained by the Ministry of the Attorney General for the Wynberg-Deskin court cases, while the regional range to deliver IBI per child is \$65,746 as of December 2003; and that the Provincial Auditor report to the public accounts committee with his findings and recommendations as soon as possible.

Members, I'm going to try and go through this as quickly as I can. I've given you a package and I'll give you the appropriate references as we move through this.

The motion has been tabled as section 16 of the Audit Act, which permits our committee, by motion, to direct the auditor to do some particular work. I should point out that since 1999 there have been two such references by this committee, one on a motion by myself to have the auditor review the Bruce nuclear lease and the second on a motion that was moved by Ms McLeod for the auditor to review the for-profit cancer clinic at Sunnybrook. So we have done this in the past.

Second, I want to make it clear that I have spent some time raising issues involving autism, and I can be very political about that. I am not using this committee today to do this. When I tabled the motion last week, right after the meeting I contacted the minister's PA and sent her a copy of the motion. I talked to her in the House last Thursday. I gave her a copy of the package that you have today and some additional documents and talked to her again yesterday. So I am not trying to use this committee to do an end run around anyone, but I do hope that once you see the documents and see the concerns I have, you will agree that it would be good to have a more independent and fuller look at this.

I want to make clear that the documents I'm sharing with you come from the Ministry of Community and Social Services. They have been disclosed, along with many thousands of other documents, as part of the disclosure process related to that case.

The particular information I'm going to reference, with the exception of the very last page in the package, comes from notes that were prepared by Mr Michael Nowlan, who is a staff person in Comsoc's management support branch. It was put together by him and was delivered to other Comsoc staff on January 20, 2004, so it is quite recent. The information that is contained in his briefing notes came from information that was gathered from the nine regional offices of Comsoc and involve information relating to those agencies that provide IBI service to clients. They are the service providers who were selected to do so through a competitive bidding process when the program first started.

The last page actually comes from a Comsoc briefing document that is entitled "MCSS Budget and Expenditure Tables," so that document was not included in Michael Nowlan's package but was included in the bigger disclosure package.

Let me just move to the charts. I've got about nine or so points I'm going to try and work through as quickly as I can.

First of all, the first concern that I raise—why was there no increase in the number of children funded: If you look on table 1.0—that's the very first page of the charts—at the very bottom it does give a reference to the number of children who are receiving IBI service. There are three points in time: when the program started, essentially 2001; June 1, 2002; and then December 15, 2003. Those are referenced through the documents. If

you look at June 2002 to December 15, 2003, the same number of children were served. There was no increase in the number of children who were receiving IBI services, even though an additional \$4 million had been allocated to the program.

If you flip to the next chart on the next page, table 1.1, and also the observations at the bottom—let me make a couple of points. It's at the bottom in the observations section where it's clear there has been an increase of \$4 million since June 2002. The reference by Mr Nowlan is, "Since June 2002, funding has increased by approximately \$4 million without a corresponding increase in the number of children receiving services."

If you also look on the same tables, there's a second concern I have, and that is that the program started with funding in August of about \$16 million and, in August 2001, 424 children were receiving services. By December 15, 2003, 516 children were receiving services, an increase of only 92 children, but the budget for the program by that point had increased by \$24 million. The \$24 million is more money than the program started with. When the program started, we were already servicing 424. So there's an increase of \$24 million and only 92 additional children were served during that period.

If you wouldn't mind flipping to the next chart, which is table 2.0, cost per client, I have some concerns here that I would just highlight for you. Since the inception of the program, the cost per client has increased in all of the nine regions and, in some, quite significantly. I just took the first as an example. The southwest region in table 2.0 shows a cost per client of \$33,000 in August, \$50,000 in June 2002 and \$76,000-plus in December 2003. If you look at all the regions, there is a similar increase every time, and in some areas it's quite significant. I think what's important to note in the observations section—and again this response is by the Comsoc person who is doing this. It says in the observations section, "The cost per client has continued to increase for all regional offices. The cause of the increased cost per client is not readily identifiable." I think we'd better identify this because it's quite significant.

The second concern in the same table has to do with some really interesting fluctuations which I don't understand the reason for either. For example, if you take a look—same table, 2.0—under the Toronto region, it's second from the bottom in the top chart, you see that the cost per client in August 2001 was \$34,000 and change. In June 2002 it was over \$120,000, and then if you move to December 15, 2003, it's back down to \$74,000. There is no indication what the fluctuation is caused by. It could be quite legitimate, but it's quite an extreme fluctuation, in terms of cost per client. If you look at the central west region, which is the very bottom one, the same type of fluctuation: a dramatic increase in 2002 and then back to \$54,000 in 2003.

The third point that I wanted to raise, again with respect to the same chart, is that the economists who have been retained for the Ministry of the Attorney General, which is the ministry that has the lead for the court cases,

have been using the figure of a \$55,000 cost per case during the whole trial. That is reinforced in the observation section, where the ministry staff clearly say that is the figure that they are using. But if you look in the tables—table 2.0—in seven out of the nine regions, the cost per client is in excess of what the economists are using at the Wynberg case, and in some circumstances in excess of \$25,000.

So I guess I don't understand why there is such a discrepancy between what the folks who have been retained by the AG staff are using in court, which is quite legitimate for them to do—I'm not making an argument about that—but then why are the costs in seven of the regions so much different, so much higher than what they believe should be the average cost for IBI for a 40-hour week? I think those are the issues that I wanted to raise on that table.

If you wouldn't mind to move to the next one, entitled "Approved Hours of Intensive Behavioural Intervention Regional Analysis," when we first looked at the table, we wondered whether or not the increase in funding actually meant an increase in the number of hours serviced. Perhaps more children weren't serviced during the time period in question, but maybe the children who were receiving service got more hours. In fact, it doesn't look like that's what's happening either. That's why I included this particular table.

If you look at the table—just take the southwest region, which is the top one, for example—you see that in August 2001, 59 children were receiving approximately 19.1 hours a week, on average, of IBI service. If you move over to December 15, 2003, there are actually fewer children—54—but they are still receiving 19 hours of service a week.

If you go to the second example, the east region: in August 2001, 33 children receiving about 23.6 hours of IBI a week, on average. Look at December 15: 37 children—four more—but receiving fewer hours of service, on average; 23.1. That appears to be the same across the regions.

So we can't say, I think, that what happened during the period is, in fact, more kids received more service, and that explains the increase. In fact, in a number of regions, fewer children were receiving service, and the service they were receiving was the same average number of hours as two years before. So I'm looking for an explanation of how \$4 million didn't serve any additional children. It doesn't look like it meant that the existing 516 kids got more hours. That didn't happen either. Again, I have no explanation, but I would like to have an explanation of what those increases were attributed to.

If I can move to your final slide, this was a different document. This came from a document that was entitled MCSS Budget and Expenditure Tables. It's "Table A: Budgets, Expenditures and Percentage Increases for Autism Strategy."

A couple of concerns here—and I'm only going to deal with the very first item under the column "Program/Year." You will see a column that's entitled

“Intensive early intervention program.” Then you see the budget for a number of fiscal years and the actual expenditures for those fiscal years.

In the first year of the program, \$16 million was budgeted for this program. The actual expenditure was \$15,400,000; so \$600,000 was not spent.

In 2001-02, a budgeted program of \$36 million, and \$30.9 million was actually spent. So about \$6 million was left unspent.

Then in fiscal 2002-03, an estimated \$40.3-million program; \$36.7 million was actually spent. So about \$3.6 million was left unspent.

We don't have the actuals for the most recent fiscal year, which just ended. The program was budgeted to spend \$46.5 million. As I said, TBD; we don't know what the final figure is for that.

1020

I raise my concern on this issue. I don't understand why the regional offices were sending money back to the centre. This program has a waiting list of 1,100 kids right now who are waiting for service, but in every fiscal year so far, it appears that money came back to the centre and those kids sat on a waiting list. With this government announcing an additional \$10 million for IBI, I don't want to see that happen again, I really don't. I don't think anybody in the room does.

There are a couple of other concerns that I have. I don't have slides for them, so let me just go through this quickly.

**The Chair (Mr Norman Sterling):** The problem here, Shelley, is you're presenting the evidence and you're drawing conclusions. Some of them I can't add up. In your August 2 to December 15, you're saying that there wasn't any increase in services, and I see on your chart that there was an increase in services. You went from 9,510 hours to 11,872 hours. There were more kids receiving—

**Mr Jeff Leal (Peterborough):** Mr Chairman, what chart are you looking at?

**The Chair:** I'm on the second-last chart. I don't mind your pointing out this stuff, but the average hours per kid went up from 22.43 to 23.01. So your allegations don't match what the charts are saying.

**Ms Martel:** Mr Chair, if I go back to the chart and look at the average number of approved hours—just use the first two regions—essentially there was no difference in the average number of hours that were approved per child. If you look at—

**The Chair:** No, but you take the average across the province and it went up. You take the total number of approved hours and it went up significantly. It went up by about 15% between August 2, 2001, and December 15, 2003. I don't know.

**Ms Martel:** Let me point out that there were an additional—

**The Chair:** I'm as anxious as you to get to the bottom of any kind of discrepancies that might be, but I don't think we should go off on a—if we're going to ask the

auditor to look at this, let's give him what we have and let him draw the conclusions.

**Ms Martel:** Mr Chair, I don't think I said that there was no increase in service hours; I said there wasn't a significant increase in service hours. I think if you look at the averages through the regions, even the first two that I referenced, in the second case the average went down. So in some regions it did go up, even if you look overall at the whole program.

From the period August 2, 2001, to December 15, 2003, an investment of \$24 million appears to have resulted in an increase of only about 2,000 approved hours per week, which is even less than what we started with when the program started. We're doing better in the first year that the program started than we appear to have done in the period from August 2, 2001, to 2003.

**The Chair:** I think the numbers require the auditor to look into it, but they are confusing. As you know, there was a dearth of people that we could get to do this program. There were a lot of people who were switching from public to private, because they could make more money doing that. I had people in my constituency office who did that. So there's a whole number of factors associated with it. That's why I think some of the regional areas couldn't spend the money: they couldn't find the therapists to do the program.

That's what I think we should have the auditor do rather than reach the conclusions. The evidence you present supports your case for having the auditor look into it. I just hesitated drawing conclusions on the documentation that we have. Anyway, go ahead.

Liz, did you have a—

**Mrs Liz Sandals (Guelph-Wellington):** No, I was just going to ask that you put me on the speaking list.

**The Chair:** Okay, fine.

**Ms Martel:** A couple more points. One of the arguments that I make is that the auditor should look at the difference between the direct service delivery, which has been done through service providers, and the direct funding model, whereby the ministry does provide funds to parents so they can go and hire their own therapists. I just want to make it clear that these numbers do include both categories. We're not just talking here about service providers directly delivering the program. This included the funding for both categories of parents. There is a very legitimate concern about which one of those two options works better, works well and might be more effective. I'm hoping the auditor can take a look at both of those delivery agents and make some recommendations back to us about that.

Secondly, one of the concerns I had was that in some of the regions, there appears to be a single service provider that the ministry flows money to, and that single service provider provides IBI directly. In other areas, it appears that there seems to be a middle organization that deals with the administration and then contracts out the service delivery to four or five other agencies. I'm not sure how cost-effective that second strategy is and whether or not we may be paying money for a dupli-

cation of services that otherwise would not be there if we just contracted directly to the service providers.

I'm not saying I know what that model should be. I'm just saying that I hope the auditor will look at the situation where you seem to have a middle-man organization that's not doing the direct service delivery and whether or not savings could be achieved by working directly with those service providers who are actually delivering IBI treatment.

The other concern that I had, and there's not a slide with respect to this, but we do have cases of children who, when they started the program, were guaranteed to have a certain number of approved hours of IBI service per week. For example, Jordan Boufford, who was here with his parents on Monday, began IBI treatment in November, 2001. The contract that his parents signed with the service provider said he would receive 25 hours of IBI service a week. By July 2003, he had been short-changed over 500 hours of treatment. This was treatment that was cancelled by the service provider, not because he was sick, but because the service provider, for whatever reason, could not provide the service. That's one case.

We have another case in Hamilton, where over 800 hours were lost, which should have been provided as part of the contract. The parents have been trying to get those hours given past the age of six and have not had any luck in that.

My question is, if those kinds of hours were not being provided, where did the money go? There continued to be quite an increase in costs per client, but for those two examples at least, very significant service actually wasn't delivered. So I'd like to have a bit of a look at that.

I just want to see if I have any other points. I didn't include it in the package, but we do have a copy of an audit that was already undertaken of one service provider at the instigation of the ministry, but done by a firm outside of the ministry. It was done in the fall of 2003. I think the auditor should take a look at that particular audit and the conclusions that were drawn, to see if the recommendations are being followed up and if there were any other things that should change with that particular service provider.

In conclusion, I've tried to give you what I have in terms of documentation and give you some reasons why I hope we can have a fuller investigation. What I'd really like to see—there's a lot of money going into this program and I think we all want to see the maximum number of children being served and the program developed in a way that's going to provide the best, most cost-effective delivery as well.

I'll stop there. If there are questions, I'll try to deal with them.

**The Chair:** I have Ms Sandals, Ms Matthews and Ms Broten.

**Mrs Sandals:** We would actually share Ms Martel's concern with these numbers. I thank her for bringing these forward. We would want to see the auditor have a

look at them because I think the numbers are quite alarming.

I've personally always had a concern because I've been involved with this from the school board's point of view. We're talking about a service here that requires basically two weeks of training for the therapist. How does two weeks of training translate into costs that are \$50,000 per year or \$70,000 per year to provide a service? It just doesn't really make any sort of sense.

1030

I have heard concerns about duplication from parents in my own office, parents who talk about having been assessed by a local person who is qualified to do the assessment. They are assessed as being autistic and having a type of autism where the child would benefit from IBI therapy—not all autistic children do benefit from IBI, but these children have been assessed as having a category of autism where the child would benefit from IBI—and then they have to go off to the centralized service for the region and get in a waiting line to be reassessed before they can actually get in the waiting line to access the service. So what one is doing is duplicating the assessment, which is part of the problem, I think, in some of these overhead costs that we may be seeing.

In terms of the discrepancy that appears to be there in item number 3, I have no idea what that is, and certainly the auditor can look at that. One thing you might want to look at, though—I've had this argument a whole lot of times with the Ministry of Education about whether when one is doing provincial averages one does a weighted average of the actual service or whether one takes the regional average and then averages the averages, which often gives you a very different result. You've obviously run into it too, Auditor, given the head-nodding that's going on. Depending on whether you do a true weighted average or an average of averages, you get quite a different result, so that may be partly where that discrepancy lies, but I leave it in your hands to figure it out.

Certainly when you look at the number of hours that are being provided, at a very high cost per child—I mean, I'm just blown away by that Toronto result of \$120,000 per year. Whether there's something weird with the bookkeeping there, that just doesn't seem to make any sense at all. Clearly whatever was going on there in a couple of regions, people have reined it in, because it's gone down again the next year.

There are clearly some problems here, and we would want to get to the bottom of them too. I think some of the problems that appear to be highlighted in these data are precisely the reason we've been looking at a redesign of the whole program, because there are clearly some problems in the way the program has been delivered currently. Given the amount of money that's being spent, there are clearly some problems in terms of the number of children who are actually being serviced. I think we all want to find a way that we can get more service to more kids in a more cost-effective way.

Quite frankly, that's why I think the minister has said, "Forget what's going on there. Let's start looking at how

we can redesign the whole service delivery model," because clearly there are things we need to look at in the current service delivery model to figure out how we can do this more cost-effectively than what is happening right now so that we actually get the service to the kids. We would certainly support having the auditor try to get to the root of this, because there are obviously some problems with the way the money has been spent.

**Ms Deborah Matthews (London North Centre):** I have a question and then I have a comment.

My question is this: I notice that the three months we're comparing are August, June and December. I just wonder, are there seasonal fluctuations that would explain some of this? Why would those three different months be chosen for comparison?

**Ms Martel:** I have no idea. The ministry documentation didn't give much of an example either. It just says, "In December 2003, the management support branch completed a regional analysis of information pertaining to the ... program." It doesn't say why those particular months were chosen.

**Ms Matthews:** Thank you. My comment—I'm not going to spend a lot of time, but I am going to say that, I think like every member, we have had visits from parents. I've had several parents come see me. This clearly is an issue where the waiting lists are simply too long and there are too many kids who aren't getting what they need. If the auditor could bring to light some savings, that would be a big step forward, so I certainly will support this.

**Mr John O'Toole (Durham):** I'm also very supportive and very interested, having served on special ed committees, both locally and provincially, when I was a trustee. I am very familiar, like each of us, with many constituents who draw real cases to our attention. In many cases, there are very capable parents involved, both from the point of view of advocacy, as well as intervention in their own right. I'm wondering if we could present to the auditor, not just auditing the status quo delivery model, but looking at whether there are other jurisdictional areas with successful outcomes in other delivery models. The train-the-trainer model, I think, is extremely important. In an ongoing sense, the parents need to have skills anyway. If they get 20 or 24 hours, they still need to know how to supplement that. I think it's very important that the resources are put in the home somehow.

It really gets down to my second part, really an observation more than a question. When we looked at individuals with special needs, often many parents in an organization with assisted living kind of questions don't want to fight their organization, but they want direct funding themselves. They want some role in making sure that the appropriate service is being delivered. The service provider is usually some agency, or through some organization, and they seem to get in the middle of what the appropriate treatment or course of support is.

I would wonder what Ms Martel's position is on a direct funding model, where there are assessments done

and the criteria have been met, and these are the supports that should be provided, whether it's speech and language, whatever kind of thing it is, including IBI. There may be a whole raft there. They're not all the same. Some of it is speech, some are non-verbal, some are verbal, some are physically active and some aren't. To think that one therapy is going to solve all this is absolutely wrong, I think. I'm just wondering about the parent's role following up on the assessment. Now, they would not get the money directly, obviously. It would have to flow through somebody.

But they would have to sign. I get the same questions, Shelley, about the therapist that didn't show up. I get a lot of that. They are fighting to get the extra 10 hours, and they're spending all that unnecessary energy. The service recipient should have to sign something—that they got it—and then the money is released.

Those are just some observations. I think there are other methods for each individual case of providing appropriate services, with the parent having a very significant role where that seems to be a signed-off agreement. There could be other situations where there isn't the full support of the family.

**Ms Laurel C. Broten (Etobicoke-Lakeshore):** Obviously, this file is an important issue to the minister herself. She spent a lot of time on it. With a commitment to invest even more funds, I think the role of the auditor is an important one and the role of this committee is to make sure that we get the best value we can for the funds that we put in place and, as my colleagues have said, get the most help to the most kids out there.

We're in a bit of a difficult situation. Unlike some of my colleagues, I wouldn't consider myself an expert, not having ever seen these documents before today and knowing that they come out of the context of litigation. Obviously, it's not appropriate for us to comment in one way or another that might guide the context of the litigation or look like we're trying to influence it. But at its heart, the basic concept of finding out how the money is being spent, asking the auditor to do that, making sure that we get the best value we can, is something that I support, certainly, and I know a lot of my colleagues do.

Moving forward on some more innovative strategies to get even better value for the dollar to help the most kids is, I think, also important. I know, like all of us, I've spent a lot of time with the families in my community, many of whom I know Ms Martel knows well, working with them and helping them get what they need for their kids. It's a priority for all of us. We want to make sure the new funding that we're going to put in place is well spent. We don't want it to be wasted. We don't want it to go to therapists who aren't trained, and we don't want it to go to therapists who don't show up. So we support the work you've done in this area to bring this to light and want to ask the auditor to help us make sure we get the best value. That's what those families need from us.

1040

**Mr Leal:** Just a quick question to Shelley. In the case you mentioned, the parents were provided funding and

then the therapist—could you go over that again? I didn't make my notes quickly enough, and I think it's an interesting example.

**Ms Martel:** It turns on Mr O'Toole's point about the two options that are in the program, one a direct funding option and the second a direct service option. Under the direct service option, a service provider, with their staff, provides the IBI to the child. The parents sign a contract at the point that they are approved for the program, and the contract outlines how many hours of service per week will be provided, the parental obligations etc.

This was a direct service issue. I believe he started in November 2001, and the parents were told that Jordan would get 25 hours per week. By July 2003, he had lost over 500 hours of service that contractually should have been delivered. Now, if you lose an hour because your child is sick and you have to cancel, that's your problem. I'm not making an argument in that case. That happens. However, if you are losing your hours because your service provider is having trouble getting your therapist there for whatever reason, then I don't think that's the parents' problem any more. In this case, within about an 18-month period—closer to two years—500 hours that should have been provided were not. The parents assure me, because they documented those hours, that it had nothing to do, from their side, with their son not being able to participate in therapy; it was a problem through the service provider.

The case we have in Hamilton is 800 hours, and that is not uncommon. But those hours are lost. I don't know the reason behind that, why you could have so many hours lost in an organization.

Those are the two examples that I'm hoping the auditor can look at, how that works and how well it is or isn't working.

It speaks to Mr O'Toole's question about what method I prefer. It's hard to tell, because both have some pros and cons. For example, the direct service option is attractive to many parents. They sit on a waiting list hoping to get that option because 100% of their costs are covered. The therapist's costs are covered; the psychological assessments are covered. If you're getting direct service via a contract through a service provider, everything is covered.

The second option, the direct funding, is where you as a parent get funding for your IBI therapist, but in all of those cases the parents are paying costs out of their pocket. They have to pay for the psychological assessments. There are additional costs that are not covered for them through that model. It gives them more flexibility, and I can tell you that every parent who has direct funding can find a therapist. There's not a problem of not finding therapists. But the dilemma then becomes, for many of those parents, that they are paying additional costs out of their pockets and they can't afford it.

So there are pros and cons to both. What I'm hoping is that the auditor can look at, if you're going to keep both options in place, how you can make them more effective. How can you deal with the problem of losing so many

contracted hours, and how can you get those hours back if indeed they were supposed to be delivered?

If you're going to continue with the direct funding model, how can you cover more of the costs so the parents aren't trying to fund IBI out of their own pocket, in addition to the funding they're already getting from the government? What they end up doing is keeping track of the hours and submitting that to the ministry, and they get the money to fund their provider. But all of them pay out of their pockets for costs that are not covered.

**Mr Leal:** Could I get a copy of that information from you, if that's possible?

**Ms Martel:** Sure.

**Mr Leal:** I'd appreciate it.

I support this. I think it's crucially important for the auditor to review this. My wife is an elementary school teacher in Peterborough and has autistic children in her school.

A very important question here: Coming from a municipal background, we used to always have the debate, in terms of providing services to residents of Peterborough, about whether we provided the direct service model or contracted out to a third party to deliver those kinds of services. The city of Peterborough auditors would always review those aspects: the direct service model or a third party.

In light of the information provided by Ms Martel, certainly something I'll be looking for is the efficiencies of looking at those two service models. When you employ certain financial resources, you're expecting some outcomes from that. I think this exercise will shed a great deal of light on those two issues, which I think are crucially important.

**Mr O'Toole:** I think it's worthwhile. It's educational for us and perhaps instructive to the auditor, but I've really come to the conclusion over the last four or five years, working with this specifically, that the key thing here is consistency in the assessments and treatments. The two models don't provide the same consistency. That's one of the problems I see. Parents may be happy but the progress may not be improved. They're happy to get the support, however satisfactory the changes or improved outcomes are.

I think, as Mr Leal suggested, we should be trying to assess the outcomes for both the direct funding and the direct service model—I really do. I support the idea of uniformity in assessments.

Some parents don't realize that the child isn't progressing. They may be getting service, and they're frustrated, but there's no assessment. They can't afford for the psychologist to come in and do the follow-up, to say the treatment is achieving the outcomes that are essential. They're just happy to get somebody to take care of the child, technically, and interact with them. I'm serious. I've talked to them. One is a very nice couple. He's a very well educated minister and his wife is a nurse with a master's degree. They're very capable people and they'd be happy to get the direct funding model, but the problem is the assessments. They can't afford the five grand. The

assessments cost a fortune. They're really quite expensive.

Anyway, I think we may spend some time on that. The auditor is going to compare—you shouldn't look at one model and say, "This is how to improve it: give them more money."

**The Chair:** As a former Attorney General, I understand, with regard to the autism case, that Ontario's funding of this program is probably the most generous in the world in terms of dealing with it. I think we should try to make sure that those funds—that generosity which has been shown in the past and continues to be shown by the present government—are spent in the right places. We want to help these kids as best we can.

Are we ready to call the question?

**Mr O'Toole:** I have one other question, if I may, with your indulgence. This is more of an observation, and Mrs Sandals may understand this one. When the children's treatment centres go to provide services in a school, it's problematic. I don't want to make this a political issue, but they can provide instruction and advice and do assessments in the hallway or some special ed room, but they actually can't provide the service in the classroom or in the teaching setting. It's a problem. They get money allocated and they can't provide the services to the children in schools. Mrs Sandals, are you familiar with that problem?

**Mrs Sandals:** Yes.

**Mr O'Toole:** It's a huge deal.

**The Chair:** Mrs Sandals, did you want to—

**Mrs Sandals:** Actually, I was going to comment on a couple of the issues that Mr O'Toole raised, if I can.

**The Chair:** OK. I think we're going to send this to the auditor. I think there's unanimity.

**Mrs Sandals:** Yes, I agree. I just wanted to briefly respond, if I may, to a couple of the issues he raised.

**The Chair:** Sure.

**Mrs Sandals:** One was talking about the train-the-trainer model. In fact, that is in the announcement the minister made and it ties into his last comment around wanting IBI services directly in the classroom. What will happen is that there will be training of teachers, spec ed, EAs, spec ed consultants to deliver a range of ABA therapies and then those can be used directly by EAs and teachers in the classroom, as opposed to this conflict between the IBI therapists and the—so that is part of the model.

1050

The other concern we would share is the whole business around tracking the effectiveness of the therapy. At what point is this very expensive therapy actually achieving results? That's part of the issue around having a research chair actually looking at tracking the different therapies and what therapies are actually effective for which kid.

I would share both of the concerns that you raised. In fact, those are concerns that we're trying to address.

**The Chair:** The last thing I would throw out to the committee is, as you know, there's litigation going on at

the present time. We don't really want to affect either party in this litigation. Would the committee like me to write to the Attorney General and ask him for his advice with regard to our deliberations and what we produce in this, or do you want to just let him intervene as he sees fit?

**Mr Peter Kormos (Niagara Centre):** I'm vaguely familiar with the litigation, by osmosis. Obviously, the issues being litigated are far removed from the matter of cost-effectiveness. The issues being litigated are in two forums: one in the Human Rights Commission, in terms of the allegation of discrimination; and, in the civil litigation, a basic fundamental right to access to treatment.

I appreciate what you're saying, but I think there's a sufficiently clear delineation between what's being litigated and what's being proposed here. I don't think anybody here could entertain the prospect of a risk of trampling or in any way encroaching on the matters being litigated in those two forums. I appreciate your cautiousness, but there's some element of letting the auditor get going and proceeding with this. The Attorney General is in a peculiar position then, quite frankly.

Also, you know full well that the precedent surrounding committees is that the committee controls its own process. I think it's important for the committee to utilize that prerogative, that right, and not surrender it. The committee controls its own process. The Speaker doesn't even control the committee. The precedent is clear. I appreciate what you're saying, but with respect to the members of the committee and to you, I think it's risky.

It's one thing to ask the Attorney General to participate in the probe that's being requested of the auditor, but it's another thing to ask for the Attorney General to guide the committee when I don't think there's any suggestion or any appearance or any—what do they say Ms Broten? *Prima facie*? Is that the right word? It's a Latin word, I think—any *prima facie* overlapping of what the committee seeks to do and what's being litigated in those two forums.

**The Chair:** I guess my concern was once we table the report, it becomes a public document and then it could become part of the case. I just don't know what the timing of the case is. It might have an impact on the outcome on the case, as you gather conclusions and you gather research and those kinds of things. I'm just asking for advice, that's all.

**Mr O'Toole:** On the legal status, it's my impression that the issue here at the moment is in some arenas a human rights case. But really, the ultimate test here is the test that was brought to the court in BC, which really defined it as medically necessary. If or when that gets established, that's technically when the discrimination—who is provided or not provided.

I think we're a little ahead on the issue technically, in terms of the province providing a service. Even the status of IBI and ABA are not universally validated as the appropriate therapy for each child. There's some discussion about that.

**Ms Broten:** Certainly the work undertaken by this committee and the auditor is important work and that work needs to continue regardless of litigation ongoing. I'm comfortable that the auditor, working with the Attorney General to get the information from the ministry, conducting a value-for-money audit and examining the issues that we've raised that relate to the work that is undertaken by the auditor—that can be managed and can go forward.

In the room today, we've had discussions that I think, frankly, go beyond the role of the auditor to examine some of the things. I see the auditor nodding and agreeing. We get into that in this committee because we want to talk about policy and we want to talk about government direction. I know the auditor won't examine that

direction, and that is possibly where some more areas of concern could have arisen.

So, if we're doing a value-for-money audit and we're looking at this information coming back to the committee with the information that Ms Martel's motion raised, I think we have a comfort level there. Examining all the extraneous measures that the minister is putting in place and where we might go in the future is separate and apart.

**The Chair:** OK, let's call the question, then. All those in favour? Carried.

The next matter of consideration for the committee will be the consideration of the draft report of the Family Responsibility Office in closed session.

*The committee continued in closed session at 1056.*



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Mr Peter Kormos (Niagara Centre / -Centre ND)

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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 24 June 2004

# Journal des débats (Hansard)

Jeudi 24 juin 2004

Standing committee on  
public accounts

Organization

Comité permanent des  
comptes publics

Organisation



Chair: Norman W. Sterling  
Clerk: Susan Sourial

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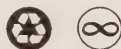
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Thursday 24 June 2004

Jeudi 24 juin 2004

*The committee met at 1005 in committee room 1.*

## ELECTION OF CHAIR

**Clerk of the Committee (Ms Susan Sourial):**

Honourable members, it is my duty to call upon you to elect a Chair. Are there any nominations?

**Ms Laurel C. Broten (Etobicoke-Lakeshore):** I'd like to nominate Norm Sterling as Chair.

**Clerk of the Committee:** Are there any further nominations?

**Mr Richard Patten (Ottawa Centre):** We want to know his qualifications.

**Mr Norman W. Sterling (Lanark-Carleton):** I humbly accept.

**Clerk of the Committee:** Seeing none, I declare nominations closed and Mr Sterling elected Chair.

**The Chair (Mr Norman W. Sterling):** Thank you very much. My acceptance speech is 30 minutes.

**Mr Michael A. Brown (Algoma-Manitoulin):** OK, we'll be back.

**Mrs Liz Sandals (Guelph-Wellington):** Do you want us to retract?

## ELECTION OF VICE-CHAIR

**The Chair:** Nominations for Vice-Chair?

**Mrs Sandals:** I would like to nominate Julia Munro.

**The Chair:** Any other nominations? Seeing none, I move that nominations be closed. Any objections? All in favour? I declare Julia as our Vice-Chair.

## APPOINTMENT OF SUBCOMMITTEE

**The Chair:** Now I'd like to have appointment of the subcommittee on committee business.

**Mr Brown:** I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or on the request of any member thereof, to consider and report to the committee on the business of the committee; that the subcommittee be composed of the following members: the Chair as chair; Ms Munro; Ms Martel; and Ms Broten; that the presence of all members of the subcommittee is necessary to constitute a meeting; and that substitutions be permitted on the subcommittee.

**The Chair:** Any discussion? All in favour? Thank you very much.

Any additional business before the summer that anybody would like to raise at this point?

**Mr Patten:** Yes. I understand that our clerks are shifting. On behalf of the committee, I would like to thank Anne very much for the job she has done over the years. We will miss you.

**The Chair:** I'd like to add my thanks as well, on behalf of the other members of the committee on the opposition side.

Members of the committee should know that this is done, I guess, to ensure that clerks gain experience in front of all the different committees and that it is quite a normal process for them to rotate from time to time.

Anne, I'm sorry you won't be in Fredericton with us; I hope your committee travels widely and often. All the best.

Laurel, I think they were asking us to meet to choose a new auditor. As you know, Jim is still our acting auditor. Have you been approached on that at all?

**Ms Broten:** No, I haven't heard anything about that.

**The Chair:** We'll have to talk about that, because the process should get underway, perhaps this summer. Maybe you could talk to me about it. As the Chair of this committee, I feel some obligation to see that that process gets on its way.

**Ms Broten:** Sure, I'll follow up with that.

Have we had a motion passed to be able to sit over the summer? I think that might be being done today.

*Interjection.*

**Ms Broten:** Expected today? OK.

**The Chair:** I know that it was in the works.

I hadn't heard. Was it August and September, or August? I understand the House is coming back in mid-October, so it would be in that period of time.

Thank you very much. Everybody have a good summer.

*The committee adjourned at 1009.*

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First Session, 38<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Première session, 38<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Thursday 18 November 2004

# **Journal des débats (Hansard)**

Jeudi 18 novembre 2004

## **Standing committee on public accounts**

Special Audit Report,  
Provincial Auditor:  
Ministry of Children  
and Youth Services

## **Comité permanent des comptes publics**

Vérification spéciale,  
Vérificateur provincial :  
ministère des Services  
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STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Thursday 18 November 2004

Jeudi 18 novembre 2004

*The committee met at 1003 in room 151.*SPECIAL AUDIT REPORT,  
PROVINCIAL AUDITOR  
MINISTRY OF CHILDREN  
AND YOUTH SERVICES

Consideration of the special audit report, intensive early intervention program for children with autism.

**The Chair (Mr Norman W. Sterling):** Good morning, ladies and gentlemen. My name is Norman Sterling. I am the Chair of the public accounts committee. I see we have a fairly large audience, as expected, here today.

Part of the rules of this Legislature is that the audience does not participate in any way with what goes on, either in the Legislature or in the committee room. So I would therefore ask you to withhold any comment, applause or anything else. Otherwise, I would have to ask you to leave, and I would be forced to clear the room.

At the front, I have the committee clerk and researchers, and on my left, I have Jim McCarter, the acting auditor for the province of Ontario. We have on my right a number of MPPs from the Liberal government, and on my left, I have Julia Munro from the Conservative opposition and Shelley Martel from the NDP opposition.

Normally, when the auditor produces a report, we ask the ministry to come forward and present their immediate response to that report and thereafter ask members of the committee to ask the presenters their questions about the responses to the report.

The report that was done by this committee and ordered by all members—or asked for by all members of this committee; it was unanimous that every member of this committee wanted this report done by the auditor—is somewhat unusual. Normally, the activity of this committee is to respond to the annual report of the auditor, which is produced at the end of November or early December, so this is a little different from what we normally go through in terms of our hearings and our considerations.

You should also know that everyone on this committee has wanted to be open with regard to the publication of the report. The publication of the report, upon our receiving it, was also a unanimous decision by all members of this committee. So I believe every member of this committee wants to get to the bottom of this

matter and we want to improve upon the situation that we found in the report.

Now, in front of us we have members of the ministry responsible for this area of our government. Therefore, I'm going to ask the members of the panel sitting in front of us from the ministry to present their case. We have two assistant deputy ministers and we have the deputy minister, Jessica Hill. Perhaps I could ask Ms Hill if she would be kind enough to introduce those who are with her and also to indicate if you would like to make an opening response, and would you also tell us the length of that response so we can try to calculate what kind of timing is going to be involved here.

**Ms Jessica Hill:** Thank you, Mr Chairman, and members of the committee. Today I have with me Trinela Cane, the assistant deputy minister for policy development and program design. I have the assistant deputy minister for the program management division, Cynthia Lees, and the chief administrative officer for the ministry, Bohodar Rubashevsky.

The length of my remarks will be approximately 10 minutes, and then we would like to open the floor to questions and be able to respond to them in a fulsome manner.

**The Chair:** If you would like to go ahead.

**Ms Hill:** I'd like to begin by thanking you for the opportunity to address the recommendations in the 2004 Provincial Auditor's report, Intensive Early Intervention Program for Children with Autism. I would like to express our appreciation to the Provincial Auditor for his report. We welcome this process and are confident that it will help us to improve the work we do on behalf of children with autism and their families.

I would also like the committee to know that the regional providers were very open and candid with the auditor on the issues they face. They also take their commitment to delivering services to children with autism very seriously.

I know we are joined today by the parents of children with autism. We recognize that they face many challenges on a daily basis. We keep this in our minds as we work to make improvements.

Although we have made some good progress in improving our support to children with autism, we have many issues to address.

While 40 more therapists and psychologists have been hired as of October 29 to provide intensive behaviour intervention to 20% more preschool-aged children, we

still have challenges in recruiting and retaining IBI therapists. Recruitment and retention will take a long-term planned approach.

To increase the number of therapists, we have worked with the Ministry of Training, Colleges and Universities and the Ontario community colleges to create a new certificate program in autism and behavioural science. We expect students to be enrolled in this program starting in the 2005-06 academic year.

Recruitment and retention is an issue in many human services fields.

Let me turn to the question of general accountability. We are working with the agencies to improve their financial and service delivery accountability. The ministry will meet with its lead service providers to review those expectations and to outline how the ministry will continue to monitor their performance.

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The ministry will continue to improve its contract management processes. The lead service provider is responsible for managing the clinical and reporting requirements for the intensive early intervention program. The ministry is currently developing performance measures for the intensive early intervention program as part of the 2005-06 results-based planning process. Information from the performance measures process will also support the ministry's evaluation activities.

There were a number of recommendations in the auditor's report that dealt with the way the ministry tracks data. The issue of data integrity is one that the ministry is aggressively pursuing. We will continue to strengthen our data collection system so that information is sufficiently detailed, relevant and accurate. As we said in our response to the auditor's findings, the ministry has already begun to take steps to improve the effectiveness of our data collection system by improving the clarity and consistency of data elements and definitions.

The ministry has already held training sessions in August and September of this year to train staff in the Integrated Services for Children Information System, referred to as ISCIS. Training material that clearly defines the various data elements of the information system was provided to training participants. A dedicated help line is available for regional service providers requiring assistance with the information system. The ministry continually reviews any help line questions received in order to determine that the information system is functioning correctly. We are taking the further step of improving ISCIS to make it more user-friendly.

The ministry will also work with regional offices and regional programs to explore ways to improve the current system so that complete, accurate information is available for program monitoring, research and evaluation.

The ministry also recognizes the need to examine the variation in cost per child for similar services among providers. The ministry will meet in December with the service providers to establish a working group. The group will be expected to provide advice to the ministry to make necessary changes to capture better costing information.

By the end of the 2004-05 fiscal year, the ministry will have both an evaluation framework and the appropriate contracts in place to begin an evaluation of this program. The evaluation will investigate aspects of both the design and service delivery model, including its impact on children with autism.

We understand that we have a lot more work to do, and we are willing to do it. We're addressing the issue of under-spending in this program. It has been directly related to the challenges of starting a new program on a province-wide basis where there was very little capacity to build on. There are some program design issues that the Provincial Auditor has identified and recommended we address, such as lost hours, cost of direct service and direct funding, and centre versus home-based services. We will be reviewing these areas.

Mr Chairman, we are committed to continuing the progress that we have made to date so that we can reach even more children with autism. I trust that, along with my colleagues, we can speak to individual questions the committee might have.

**The Chair:** What I'll try to do, committee members, is to keep the time relative between the parties, with the idea of trying to let everybody participate who wants to participate in the questioning. Perhaps, at the very outset, if the committee members would not mind, there are two definitions that I think are going to be important in our discussions: the direct service option and the direct funding option. Would committee members like the deputy to explain the difference between the two before we enter, or would you just like to get into questions?

**Ms Shelley Martel (Nickel Belt):** I think we had a fairly significant briefing by the auditor two weeks ago, and we probably all understand that terminology.

**The Chair:** OK. Questions, then? Ms Broten. Perhaps members of the audience would like members to just name the riding from which they come.

**Ms Laurel C. Broten (Etobicoke-Lakeshore):** Sure. I'm Laurel Broten, and I'm the member for Etobicoke-Lakeshore.

Mr Chair, before we start, can I just get clarification as to whether I will share some time now with my colleagues, and how long we might have in rotations?

**The Chair:** If we switch to a member of another party, I'll keep the cumulative time there so your members don't necessarily have to ask the questions all at the same time; you can rotate it around.

**Ms Broten:** That's fine, thank you.

Good morning. Ms Hill, I'm wondering if we can talk about an issue that is certainly very significant to the parents in my own community, and that is the issue of services being provided to children over age six. I'm wondering if you can talk a little bit about what our government has done and what improvements have been made as part of the minister's plan with respect to dealing with the need in our communities to help those children who are aging out of service, and also to continue with the treatments after age six.

**Ms Hill:** Thank you for that question. The ministry has initiated a new school support program—autism

spectrum disorder program—to enhance the skills and knowledge of educators working with students who are moving into the school system. As of November 12, this program has hired 83 autism spectrum disorder consultants, who are supporting the school environment—teachers, principals, the school setting—in order that they are able to support children in the classroom.

In addition, we have also increased the number of transition coordinators under the regional programs so that they can help to facilitate that transition for children and their families as well. If you'd like more information about that, I certainly can ask my assistant deputy minister Trinela Cane to speak to it.

**Ms Broten:** Perhaps what would be helpful is, one, to have a bit of a practical explanation of how the help of a consultant flows in to assist the children. Second, I want to have some information with respect to a historic problem that we understand existed long before we got here, which is the issue of kids who didn't get service while they waited on a waiting list and then turned six. If you could speak to that one as well—so to those two questions.

**Ms Hill:** Perhaps Trinela could speak to the first question.

**Ms Trinela Cane:** Thank you very much for the question. In terms of the school support program for autism spectrum disorder, as the deputy mentioned, 83 new consultants have been hired to serve the 72 boards of education across the province. The way the program works is that currently our regional service providers are engaging in the development of local protocols to govern the types of activities and services delivered by these consultants in the various school boards across the province. There is a core set of services that are expected by each of the consultants. The consultants, I should note, are in place to help support the educators in the system, which means that they are there to support teachers, teaching assistants, principals, other administrators. Many of the consultants who have been hired—and I have to say we've been extremely impressed by the calibre of the people we've been able to attract in this area—are, I should note, former teachers themselves. Some are special education teachers, some are retired from the education system, having worked there in a number of different capacities, and a number have many social service and other skills. So we are quite pleased by that.

The actual consultants themselves are knowledgeable about applied behavioural analysis techniques. Their role is to work with the educators to promote effective behaviour management in the classroom, to support them in terms of their knowledge and education about autism, and to provide necessary workshops and other supports that the individual schools and school boards find would be helpful. So the goal is to have them developing direct relationships with the educators in the various schools across Ontario and supporting the educators as they work with children in the classroom.

**Ms Broten:** Thank you.

**Ms Hill:** In response to your second question, this program responds to all children who have autism and are in the school system. So in response to your question about those who have not had the benefit of having the IBI program in the preschool setting, this program is available to all children and is intended to be, in a sense, a broader support.

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**Ms Broten:** So this program in the schools obviously is available. But in terms of those children who from ages two to six didn't receive any treatment at all because they were on a waiting list, is there any other program available?

**Ms Hill:** Is there any other program available for them after six?

**Ms Broten:** Yes.

**Ms Hill:** This is the primary program. However, there are supports in the community that I know the regional providers are working with to ensure that families are referred to what supports exist in the community as well.

**Ms Broten:** At the regional service delivery level.

**Ms Hill:** The regional service provider and their subcontracted agencies.

**Ms Broten:** Thank you.

**The Chair:** I'll let Ms Di Cocco go at this time.

**Ms Caroline Di Cocco (Sarnia-Lambton):** Thank you, Chair, and thank you for commenting that the committee, I believe unanimously, endorsed having the report done as well as making it public. I think it's critical to understand that the intent of the government and of this committee is to try to understand and to have a critical analysis done so that we can then deal with some of the holes, if you want to call them that, that are definitely in the system. I thank you for that.

Just to reiterate, the critical analysis—I call it that—that was done by the auditor is something that, of course—if we understand what is not working, hopefully we can then take steps to fix it. Just a couple of things. The report went to December 2003, I believe, and the Ministry of Children and Youth Services was just a fledgling—it was very small—under the new government. When you have a new ministry, it does take time to put all of the pieces together. Although I say this, I understand that the parents who are dealing with this matter and have been dealing with it for years certainly have every right—let's put it this way: Their patience certainly is not there, and rightly so. They deal with these issues day in and day out. They need the services, and they require good services.

For me, the important thing that government has to do is to make sure—the systems may never be perfect. That's just a reality for whoever is running the show. No system is perfect, but that doesn't mean we stop trying to make it better. What is important in all of this is that the dollars and the commitment that have been put in and added to improving the system—although, again, it's an ongoing process, it's important, according to the auditor's report, that those dollars effectively serve the people who need the services.

I'd like to ask what the ministry is doing to ensure that we're going to have better services for children with autism as we move forward, so that next year, if we have another report, we certainly are able to deal with some of those recommendations so that both the capacity for the autism program is enhanced and we get more children into the service. Again, I don't want to suggest that everything can be 100% or perfect, because I don't know if that's attainable—but certainly a better service.

I put that forward: What is being done to build capacity in the autism program, and what is being done to get more children to be serviced? Because that's what the money's supposed to be there for.

**Ms Hill:** Thank you for that question. There is a number of areas where the Provincial Auditor spoke to needing improvements that address that question. I think there are aspects of it that you referred to in terms of capacity building, there are aspects of it in terms of being able to accurately capture the expenditures and ensuring that we're comparing apples and apples—because currently we are not; the two funding models are quite different—and the third is ensuring that we have the most cost-effective service delivery model.

What I'd like to do first is have my ADM, Trinela Cane, speak to some of the capacity building as well as the efforts we are making to capture information in a more effective way. Truly, I think what the auditor outlined were some of the challenges we faced in terms of capturing the same information and being able to compare it, which we haven't been able to do to date.

**Ms Cane:** Thank you very much for the question. I have to say, at the outset of my response, that this is a very challenging area, and I can't presume to begin to understand how parents are trying to cope in this situation. But I do want the committee to know that in terms of building the necessary capacity for the service system for children with autism, we are very committed in that area.

In our discussions with the Provincial Auditor and his staff, a number of suggestions were made that will speak to the need for enhancement of the current program design. We've already made a commitment, as part of our response to this committee and to the Provincial Auditor in his report, that we will be addressing those significant issues and giving them due consideration in very short order. We will be looking at all of those areas that have been flagged in the program design. To some extent, to many parents and others, these are not new issues.

You referenced the new ministry being created. I think that's an important element as we move ahead, where we need to look across the range of children's services to ensure that we are actually looking at children quite holistically. Children with autism are no exception. They require many different types of services, and we want to make sure that children who are in need and at risk have those services available. So I'll just say that at the outset.

In terms of the capacity building, I think what we will have, and do have already, is a series of shorter-term and

longer-term initiatives. The shorter-term initiatives that I will mention and that the deputy has mentioned: in the area of IBI, an immediate \$10-million infusion to enhance service in that area. I am pleased to report that there has been significant progress in the hiring of therapists, which, as many of the committee members will know from their in-depth briefing, has been a serious issue in program start-up and ongoing expenditure planning. We have now 53 new therapists and three psychologists that have been hired in addition to the staffing that has continued over quite a period of time. I think we are making demonstrated progress in that area. Our commitment is to serve at least 100 more children by year-end with that infusion, and that we will do.

I should also mention that we've taken some shorter-term initiatives around capacity building, particularly in the recruitment area, where we've actually had on our Web site information encouraging people to enter this profession. This is a very challenging profession and there is such a need for resources in this area. We've actually taken quite a pre-emptive step in terms of trying to give people information about the nature of this profession, because I think many people are not aware of this line of work, and those who are certainly are very committed to it. We are continuing that effort in terms of ongoing recruitment on the ground.

In addition, we have taken two other steps that were announced last spring. One is the development of a grant assistance program, which will be available beginning in January, to allow people who have received necessary training in a number of related professions to receive reimbursement for their educational training, both in the past, if they've managed to be retained for one year in their current position, and also for ongoing training that they may undertake in the future. I think that's going to go some distance toward some of our recruitment issues, but certainly our retention issues, which are equally important.

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In addition, I should comment that we've been working with a few community colleges to build immediate capacity to train folks in the behavioural science area, and autism specifically, and we have had some take-up in that area. In addition, we've put an RFP on the street and have selected a consortium of colleges that are currently developing the curriculum that the deputy mentioned and which will be up and running by the fall of 2005. Our first graduates from the certificate program will be available to our service system in 2006.

So I think there are some exciting pieces on the recruitment and retention issue, which has been a particular challenge for us, but also in terms of capacity building in the current IBI programs that we have today.

I should mention one other thing; I would be remiss if I didn't. As parents are on waiting lists, it has been a considerable issue that while they're waiting for IBI, parents also have a need for other types of services and supports. In some cases, we're making additional referrals to the types of ancillary services that I talked

about. In addition, we're offering, and every service provider is offering, a range of programs, and we've been meeting with them over the past several months to not only encourage this but direct that service providers make a range of supports available to parents, including everything from parent information to parent support groups to group sessions on specific topics. Some service providers have actually developed a fairly sophisticated multi-level approach to address parents at various stages in the process.

If that's helpful to the committee, those are a number of the steps that have been taken to build capacity.

**Ms Hill:** Perhaps I could just add one other aspect of the changes in our preschool guidelines, which was to set an expectation that the eligibility assessments would be done in four to six weeks, which will certainly speed up the process, because our goal is to ensure that the families get the supports they need as quickly as possible.

**Ms Di Cocco:** Thank you. Chair, I forgot to mention—you suggested that we say who we are and where we're from, and I didn't do that. I'm Caroline Di Cocco, and I'm a member from Sarnia-Lambton.

**The Chair:** I think we're going to go through this rotation twice. I'm going to call on Ms Martel to put forward some questions, and then I'll ask Ms Munro.

**Ms Martel:** Shelley Martel, Nickel Belt. Because neither the ministry nor the auditor have actually intervened to clarify the report, my understanding is that the audit dealt with information and a review of the ministry to the end of September 2004, not December 2003.

**Mr Jim McCarter:** Yes, that's correct. We essentially did most of our fieldwork—it took us a bit of time to get the information from the ministry, and we did most of our fieldwork in July, August and September.

**Ms Martel:** Right. Thank you for that. So it would really be an observation or critique of what's happening now, currently under the Liberal government. That raises my first concern, as noted by the auditor on page 5, where the auditor said, "Overall, the ministry does not yet"—and remember, this is quite current—"have adequate oversight procedures in place to ensure that external service providers are spending funds provided to assist autistic children and their parents in the most cost-effective manner." The current administration has to bear significant responsibility for that, given when the audit was complete.

Let me make a second observation about the school support program. I think it's important to get on the record that this is not a treatment program. It is nothing like a treatment program. The folks who will be going into the school setting wouldn't even have a requirement to have IBI training. So it makes Laurel's question important; I am not going to suggest this was where she was going, but this is where I'm going. For those kids who never got a single day of IBI treatment, this school support program is going to do zip, zero, nada for them. Most of those kids aren't even in the school system because they can't function in the school system because

they didn't get that grounding in IBI in the first place. They need IBI in order to learn in the school system, and this support program is going to do zero for all those children who got cut off arbitrarily at age six, before they should have been, when they still needed IBI, or for all those kids who never got a day's worth of IBI. It would be interesting to find out where most of those kids are right now, because I can tell you they're not in a regular classroom, integrated or learning.

That is the shame of this particular program, because we should be doing something for those kids who got cut off and we should be doing something for those kids who never got a day's worth of IBI, and we are not, despite Mr McGuinty's promise to these parents and many others that the discrimination against the kids over age six would stop under his government. It has not. That wasn't addressed in this report, but it is an important issue that needs to be raised in terms of how we are dealing with all autistic children. In terms of those kids over six, is what the ministry's providing them going to make a bit of difference in their lives or their families' lives? For too many of these parents, I regret to say, it will not.

Let me deal with the oversight. On page 6, the Provincial Auditor said, "The three most critical things the ministry needs to do are as follows: Base funding decisions to the external service providers on relevant, detailed information on specifically what services must be provided to ensure equitable funding of services...."

Because these were the most critical things that the auditor outlined—there were a number of others that came after—I'd like to get some sense of what the ministry is doing in response to point 1. Maybe you don't have the auditor's report. Do you need a copy?

**Ms Hill:** I can assure you we have it.

**Ms Martel:** Page 6, bullet point 1.

**Ms Hill:** I was actually going to the recommendations, so I will follow along with you on page 6.

I think this first point regarding base funding decisions is directly related to us having more effective information through our information systems. I did speak to some of the improvements we've made to ISCIS. In order for us to be able to better track our expenditures, as I mentioned, we are striking the working group in December with the service providers. Certainly one of the challenges has been that in the time that the service providers have been working very busily on ramping up of the program, the attention to this level of detail and the ability to compare across programs has not been addressed sufficiently.

In addition, we do want to make clear that the direct funding costs, versus the direct service costs, are really capturing apples and oranges, and we can go through that in greater detail. It is significantly different and it doesn't need to be that different, but it definitely needs to be clarified.

**Ms Martel:** Can I just ask one point on ISCIS? The auditor pointed out that the service providers told him that when they inputted information, often it was lost, or if a mistake was made it couldn't be changed, in terms of

the data, which would really affect your information. What has been done to correct that?

**Ms Hill:** I'll have Trinela Cane speak to this.

**Ms Cane:** The deputy mentioned that a number of refinements are currently in process with respect to ISCIS. I should reinforce that they are dealing with many of what I would call the minor irritants for service providers in submitting the data to the system. The member has quite rightly identified, as did the Provincial Auditor, a problem with the existing system, which is that when data is inputted, many of the fields are actually protected, so changes cannot be made by various individuals. We've had a number of discussions with our IT folks in the health and social services IT cluster to talk about what changes need to be made to ISCIS. Those are currently being prioritized. I have to say that a number of the changes to ISCIS are going to require some fairly significant investments over the next period of time.

The training sessions that we held with the regional service providers and their staff who were actually inputting the data were extremely helpful. I should mention that in the course of those discussions, not only have we come up with quite a priority list for action on ISCIS—and some of that is going to take investment and prioritization—some of it will also have to be considered in the context of our longer-term plan for ISCIS, because in some cases architectural changes are going to be required and we will have to address those.

**Ms Martel:** As you said, it's going to require significant investment. Does the ministry have the capital funds in its budget, or are you going to have to make a request to Management Board, and do you have approval for those enhancements to be made?

**Ms Hill:** In the short term, we are going to be making some changes in December that we can make within our current budget. To make any significant changes in the architecture, we would have to go forward with a request to Management Board.

**Ms Martel:** Has that been done?

**Ms Hill:** No, that hasn't been done, because we really will need to assess how much we can accomplish with the changes made in December. It isn't the only information system we work with. The other information system that the auditor referred to is the SMIS system. We want to be able to maximize the use of both systems. It may be that the SMIS system, with the improvements to the current ISCIS system, will be sufficient for the purposes of tracking the information. A great deal of what we need to do is establish the common definitions, make it more user-friendly, make it accessible and continue to refine it through regular monitoring.

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**Ms Martel:** Is that going to give you correct information with respect to what's happening in the program? The auditor pointed out that, while the ministry had reported that 516 children were receiving services by December 15, 2003, that information was at odds with information in both of your databases, and not only was it at odds, but the information in the two databases was

different from each other. So what is being done to rectify that problem?

**Ms Hill:** That's part of what I'm describing, Ms Martel: the need to have regular reconciliation of the data. In a sense, we have to weave the two together and continually check and recheck why the data are not coming together. It requires a level of monitoring that I think we will be bringing to it that is new.

We are very concerned that, in addition, the consistency of information is not just around the information system—bad data in, bad data out. You have to continue to work with the providers on this, and they are also very committed to doing that.

**Ms Martel:** Have you asked the providers to start tracking the number of hours of IBI service that are lost because the therapists aren't providing the services?

**Ms Hill:** I'll ask Trinela to speak to this, but I think the question of lost hours is a bigger issue. The Provincial Auditor asked us to look at this with the regional providers, which we're going to do. So before just asking, the question about whether we're tracking the information, we need to determine whether we're going to make any changes. But I will ask Trinela to speak to this question about information on lost hours specifically.

**Ms Cane:** In the past number of weeks, specific to a response to discussions with the Provincial Auditor, we have asked the regional service providers to begin to gather data on lost hours. So that is beginning. We mentioned that we will be meeting with service providers for two days in December. One of the focal points for that meeting is around the type of data that we need to have tracked, including lost hours, to identify issues with respect to gathering that data, and the deputy did refer to the broader policy question around lost hours, which we will have to address as well. But we are currently directing and advising our regional service providers that that information will have to be gathered.

**Ms Martel:** It's the broader policy question that I'm most interested in, because the auditor made it very clear: In the one agency that had some numbers, on average, each child lost 4.4 hours of service that was supposed to be provided every single week.

I just want to read into the record this e-mail that we got from a parent, Tom Barger, who said that he got a commitment of one year at 25 hours a week. The service provider managed to deliver eight and a half months at an average of just over 15 hours a week. When his son was terminated from the program because he turned six, he was still non-verbal. I think that's the situation of a number of parents.

We have another parent in London, Cynthia Boufford, whose son lost 570 hours from their provider, not because the child was sick; that was the provider's fault.

Frankly, I'd like to know what the ministry is going to do on this broader policy issue of ensuring that children are not losing service hours because of therapists leaving, therapists not getting there in time or whatever; that the kids are actually going to get the service hours they have been contracted to get, even if that takes them over the

age of six. So I'd like to hear if you're prepared to do that, because you should be. And if not, why are these providers still being paid full freight for services they are not delivering?

**Ms Hill:** I think you actually have three questions in that statement, Ms Martel. The first was with respect to what we're going to do about it. We are not going to be making decisions about this unilaterally. We have to work with the service providers. We do have to make a commitment to dealing with it, though, and it is important for us to think through the implications of it. As you say, there are many variables that contribute to the lost hours question. The first is the responsibility of the providers; the second is if families are not able to attend. So we need to address the full policy.

The second question you raised was about reimbursing the service providers. The service providers hire people on salary. I'm not quite sure how we could possibly ensure an effective service model if we were clawing back funding. I mean, these are people who are on salary; they're part of collective agreements. So what I think that—

**Ms Martel:** If I might, Deputy, if someone is on direct funding and the service is not provided, that money is clawed back from the parents. If you are on direct funding and the hours are not complete, you get that money pulled back.

**Ms Hill:** If you want to get into a comparison of what's provided under the two models, they're very different.

**Ms Martel:** I know, and that's part of the problem, because most parents have to cover it out of their own pocket. If you're going to continue with direct funding—and I think that's a very serious option—you should also be agreeing that you're going to pay for all the costs that these parents have to assume, especially if there's a difference in wages and salaries between workers.

**Ms Hill:** There are also costs under the direct service model that are actually of benefit to families under the direct funding model, so I think it is again comparing apples and oranges. Under the direct service model, the assessments are provided by the direct service provider. The relationship with the psychologist is provided under the direct service model. There are other supports provided to families under the direct funding model, through the direct service model.

All I'm saying is that the examination and ensuring that we are capturing comparative information in order to inform our decisions is absolutely key, and we've made a commitment to do that.

**Ms Martel:** But it's broader than that. It's not just capturing the information.

Let me go back. I mean, you do claw back that money from those parents, and parents know that. All right? There's a second issue: Parents on the direct funding model are usually paying out of their own pocket, whether it be for resource material—oftentimes it's because they're not getting paid full payment for the actual salary of the therapist or other people consulting in

the case of their child. The ministry should be looking at that. I don't know why there's a discrepancy; there shouldn't be.

The policy issue is this: We know, everybody knows—everybody has had kids who have lost incredible hours of service, not through a fault of their family or their own child but through the fault of the regional provider. Either you're going to address that and make sure those kids get the hours they were promised or you're not going to address it and those kids are going to continue to lose hours. I don't think it's much more complicated than that.

**Ms Hill:** The other complication is that in a program where you're ramping up and have a shortage of therapists—we have worked with the providers to try to address the question of how we can ensure the maximum amount of hours. The hours are increasing. We have made progress since this report. The data in this report regarding the number of hours was from a certain point in time. The commitment to increasing those hours is absolutely critical.

The reason we need to make sure we're doing this with the providers is to ensure we make a commitment we can follow through on, and that, in the efforts to continue to recruit and retrain staff, we can continue to flow children through from the eligibility assessment to the various supports families are offered and to the IBI therapy in the most effective manner. I'm not going to make an arbitrary commitment here. What we've agreed to is to look into it.

**Ms Martel:** Let me make a couple of comments. I've heard the minister say and I've heard you say that the program is ramping up. For goodness' sake, we've had five years of the program. At a certain point, either this program is working or it's not, and if it's not, then we'd better overhaul it and make sure it does. I don't buy the argument any more that we're ramping up.

Second, most parents I talk to who are on the direct funding model have no problem whatsoever finding IBI therapists to work for their kids—no problem. So I also don't buy that argument any more, that there's a huge shortage. Ask those parents who have direct funding—Ms Brenda Deskin talked to me this week about her case; she's involved in the court case. There are eight therapists working with her son. There was no problem finding them. There's a problem paying to keep them, but no problem finding them.

So those are some arguments that I don't accept any more, not at this point in time, not five years after this program was in place.

You're not prepared to give us a commitment today about lost hours. That's fine; I understand that. Let me say, though, that there's something seriously wrong when kids who are contracted to receive service lose 570 hours, in the case of Jordan Boufford. Or, in the case of Brendan Barger, he ended up with eight and a half months at just over 15 hours a week. He was only on it for a year anyway, because he waited on the list for three years. He was supposed to get 25, got 15, and now graduates non-verbal. This is not helpful to kids.

1050

As you look at this, one of the very significant changes that has to be made is recapturing those lost hours, making sure those kids get those lost hours. I don't care if they get them after the age of six—that's how it could be done—until they get all they were entitled to. The second is to make very sure that we look long and hard at the direct funding model as an option. Because parents don't have trouble finding therapists; what they do have trouble with is paying for the additional costs not covered under that program that are covered if you're in the direct service model. That's not fair.

**Ms Hill:** We have said, Ms Martel, in my opening remarks, that we are committed to looking at the direct service and direct funding aspects of the program.

**Ms Martel:** Chair, I'm going to stop and wait for another rotation.

**The Chair:** That's fine. Ms Munro?

**Mrs Julia Munro (York North):** My questions are very closely related to those you have already heard. As a member—I just realized that I'm supposed to say Julia Munro, York North—of course I too have had autistic parents come to me over the years and recognize some of the huge limitations they have run into and feel stonewalled and so forth.

I really wanted to ask you what kind of rationale was used in determining that in some places you would provide the direct service model and in some places you would provide the direct funding model. It seems to me there's a huge discrepancy in the outcomes from these two methods of service. When you hear some of the frustrations people have, they very often reflect the fact that, perhaps for reasons they didn't understand or don't understand today, they find themselves in one of those models. I think it's very important both for the families involved in this process, whichever one it is, and for us as legislators to understand how we got into a situation where we have such huge discrepancies and the frustrations that come from those.

**Ms Hill:** Thank you for the question. To begin with, to clarify, the regional providers all offer both direct service and direct funding options. I can have the ADM for program development, Trinela Cane, speak to more of the details of the way that process works. However, I would like to say that the reason both were offered was in general recognition of starting something in the province where there already were service pressures and demands, recognizing the lack of capacity in the system as a whole, and therefore the need to provide choices. Let me have Trinela speak to the details.

**Ms Cane:** Thank you very much, Deputy. I would reinforce that part of the early program design did require and still does require service providers to give parents a choice of direct funding or direct service. We recognize, and the Provincial Auditor has noted as well in some detail, that the models are actually quite different: apples and oranges.

I think it is safe to say that the inclusion of the direct funding option not only accommodated parents who

perhaps already had service providers in place—and we wanted to make sure there was continuity of service in that area—but many parents also have the wherewithal and the desire to coordinate service and had been doing so for a number of years prior to this program on behalf of their children.

In terms of the direct service option, I should mention—with the Provincial Auditor's comments as well in this area—the importance of choice for parents, given that not all parents wish to choose an option that is direct funding. We know, as Ms Martel has highlighted, that the direct funding option has a number of issues associated with it, including the dollar amounts paid and the services that can be covered as part of that. We do know, and the Provincial Auditor also commented, that many of the parents are paying out of their own pockets, and that is a significant issue, which we recognize.

On the direct service side, what we are trying to do is to create a set of services that will also benefit those receiving direct funding, and that has created some complexity, both in the data gathering and the ability to identify, for various program components, the associated costs.

At this point in time, parents do have a choice. The Provincial Auditor noted in his report from comments made by some of the service providers that it puts them in somewhat of a difficult position, because as decisions are made about direct funding, it puts them in a very sticky wicket with respect to the fact that it reduces their ability to create permanent program capacity on the ground. That was noted and is certainly known to the ministry. As Ms Hill indicated, it's an area we're very definitely prepared to look at. Addressing that issue is also quite significant in terms of its policy implications.

**Mrs Munro:** If I could just follow from what you have said, could you explain the position that parents might find themselves in with regard to having opted for one of these avenues? Since you say that they have the choice and that every provider can provide either, is there an opportunity for them to go to a different method; that is, move from direct service to direct funding or vice versa?

**Ms Hill:** I think what I'll do is have Trinela speak to this. I think some of the complexity—and it is exactly one of the issues I think we need to be addressing, as the Provincial Auditor spoke to. When the programs have been working to recruit and retain staff, they have one envelope of funding that is available. They, in a sense, split their envelope for direct funding and for direct service.

One of the challenges we'll have to address is, if we want to make direct funding more available to families, as Ms Martel has raised, it will impact on the program's ability to create capacity. That is one of the fundamental policy questions.

Whether, on a practical level right now, families can choose to switch midway, I'm actually not sure, so I'll ask Trinela to speak to that.

**Ms Cane:** My understanding is that that is an option open to parents. It does require some accommodation on

the part of the regional service provider, but my understanding is that also, in such cases, the regional service provider attempts to deal with that on an expedited basis. My understanding also is that this hasn't, to date, been a significant issue, but we are certainly prepared, through our service provider network, to accommodate that if the case arises.

**Mrs Munro:** In working out this opportunity for people to make this choice, whether they would go with direct service or direct funding, were considerations given in relation to the kind of ratio that would exist from the perspective of the ministry in terms of funding with regard to administration and front-line service? Clearly, the recipients of the IBI program are naturally looking at—they're the end user, so to speak, of this service. So for them, the issue is, "Am I getting the service that I understand I should be getting?" I think it is helpful for people to understand what kind of ratio, what kind of funding allocations, break down between what is front-line service and what is the cost of administration.

**Ms Hill:** The first question you had was whether we set any expectations about what should be the split between the two. That has been left to the service providers. In the inception of the program—however, it is an ongoing discussion and something we have been discussing with them—there was no clear understanding of what the take-up would be between direct funding and direct service. Experience will inform, and I think the Provincial Auditor's report actually spoke to the fact, that there are some advantages for families under direct service who may not be able to manage a direct funding arrangement. I think that's still a consideration in terms of ensuring that, for those families who do not want a direct funding arrangement, there's sufficient capacity to support them.

1100

With respect to administration costs, I'll ask Trinela to speak to that. We have also worked with the service providers around the cost of administration. As I did mention, though, some of what has not been captured clearly enough is the cost of delivering the other supports, such as the eligibility assessments and the parent supports while families are on the waiting list—those kinds of things. We need to be able to break down those costs, but we wouldn't count that in the cost of administration; that is service.

Perhaps Trinela could speak to what we've done in the way of cost administration.

**Ms Cane:** If I could just go back, Deputy, to the question of allocation of resources to direct funding versus direct service, our experience currently is that about 25% of parents province-wide have requested direct funding approaches. We know that, in some areas of the province, service providers are telling us that they are actually offering direct service and direct funding at about a 50-50 ratio. So it looks like across the province the take-up is somewhat different, but on average it is a 25%-75% split. I just will mention that, because I think it goes directly to your question.

Whether that will change over time, as the deputy noted, is difficult to anticipate, but I think that's one of the considerations, as we speak with our service providers in December, to look at how we can ensure that there is appropriate money to support the choices by parents that we've just discussed. So I'll just mention that.

We have done some analysis of the cost of administration for this program. Across all service providers, it's in the range of 7% to 9% for the direct administration of the actual program itself. As the deputy mentioned, one of the problems we have is that we're not able to break down discrete costs in areas such as the cost of assessment and the wait-list management that we've currently put in place. We have a coordinator for each one of the service providers, and that coordinator orchestrates a series of supports that I mentioned in my earlier response. We haven't quantified, in a discrete way, the costs associated with that.

In terms of pure administration, in terms of actually administering the programs, it is in the range of 7% to 9% across the board, but there is a range of other services that are part of a cost of doing business and very important supports to parents that we haven't identified in a discrete way.

**Mrs Munro:** Thank you. I certainly appreciate the difference between what is pure administration and what is the kind of support you're providing.

Can you give me an idea of how many agencies we are talking about across the province and in the regions?

**Ms Hill:** We have the nine regional service providers, and they have, in the regions, subcontracted with other agencies, so the total number, I believe—I think actually the Provincial Auditor captured this—

**Mrs Munro:** I'm sure he did; I just couldn't find it quickly.

**Ms Hill:** Approximately 64.

**Mrs Munro:** You've made reference to the two-day meeting and so forth to get people together. What I assume, then, is that that would include both the regional and the subcontracted, or would you just be talking to the regional?

**Ms Hill:** The network we've been working with over the last period has been the regional service providers, because they are responsible for the clinical and administrative oversight of all the agencies. But we wouldn't hesitate to bring all the providers in if we felt it would be valuable, whether it was a training session or that kind of opportunity.

I think the purpose of the working group is to really work with the nine regional providers as the leaders, to work through some of the issues around the costing, because we really need to sort it through with them first. There could easily be follow-up meetings if we felt we'd agreed on an approach that we wanted to ensure was captured by all the service contracts.

**Mrs Munro:** Moving to include those subcontracted agencies would be a most admirable step to take, simply because those are the front-line people, the people our

constituents deal with. The level of frustration, obviously, and perhaps misunderstandings that develop come at that point. To me, it seems that's an extremely important area to look at, to see what kind of issues come from that particular group of people.

Mr Chair, I'll wait until my next time around.

**Ms Hill:** In response to your suggestion, I think you're absolutely right. Driving consistency through all the provision is a very important aspect of what we will be focusing on. If we are engaging with those subcontractors through our various training or discussions or clarifications or changes, we definitely need to make sure that's part of our plan.

**Mrs Munro:** Mr Chair, after having said that, could I just ask one follow-up question that relates to that? I think all of us would be comforted by the notion that during that process you would agree to an undertaking in terms of best practices. Certainly from the position of the committee, we are well aware of there being many discrepancies in terms of service provision and things like that. To have your undertaking that any work you do with the agencies and the contracted agencies would address the issue of best practices would be something I think all of us would like to hear a commitment on.

**Ms Hill:** Absolutely. We are very committed to continuous improvement and using best practices, whether it's from this jurisdiction or other jurisdictions, to deliver the most effective program.

**The Chair:** The approximate times I have left are: the Liberal caucus, slightly under 20 minutes; the Conservative caucus, slightly under 20; and the NDP with about 15 minutes left. So we'll work in those time frames.

I have three on my list from the Liberal caucus. I have Ms Sandals, Mr Mauro and Ms Di Cocco. You can judge your time between you.

**Mrs Liz Sandals (Guelph-Wellington):** First of all, I'd like to get some clarification from the auditor, if I may. We understand that you did the work over the summer and into September. When I look at the actual data provided, it is all labelled as if it's data collected relevant to the previous budget year, the 2003-04 budget year.

**Mr McCarter:** That's correct. The data we got basically ended at the fiscal year March 31, 2004. We got the data; then, going out to analyze it, we basically asked our questions based on that data. But we did the work in July, August and September.

**Mrs Sandals:** So in fact when we look at the data in this special audit, it is reflective of what was happening in the 2003-04 budget year.

**Mr McCarter:** Yes. If you're looking at data like lost hours, like dollars, that data would be up to March 31, 2004.

**Mrs Sandals:** Thank you. It's important to note for the record that the new programs that the Liberal government has brought in were largely beginning in the 2004-05 budget year, so in fact the data we have available in the special audit does not measure a reflection of the new programs introduced in this budget year. I

think it's important that we clarify that for the record and for the public so we're all clear at least on what we're measuring or attempting to measure.

That sort of takes me into the next comment. As a committee, when we looked at the data, we were all very uncomfortable with the data available in the original audit, which is why we all agreed that we needed to do a more thorough examination of the existing data to try and get a firm handle, if possible, on what was really going on. With my background, I'm a firm believer that, while we all understand that there are a number of very serious challenges in this program, if you're going to do an intelligent job of attempting to address those challenges, first of all you have to collect the data and find out what is really going on before you can figure out how to fix it.

1110

When I speak to people in my constituency office, I hear a variety of concerns, and one of the concerns is around the waiting list for IBI. I also hear other concerns, though, about waiting lists for other services and availability of other services. In fact, I've had parents in my office who say to me, "I've got more than one autistic child. For this child, I'm really frustrated because I can't get them IBI. For the other child, I'm really frustrated because I can't get them" some other service that would be appropriate for that child. That really leads me into a question which I think fits quite well with Julia's question.

Actually, I didn't introduce myself either. We're all not doing very well at this, Mr Chair. I'm Liz Sandals, Guelph-Wellington.

If we look at recommendation 7 on page 24—I'll just read it while you're looking. "To help assess the effectiveness of the intensive early intervention program for children with autism, the Ministry of Children and Youth Services should develop specific performance measures to determine if the program is meeting its objectives of providing both short- and long-term improvements in children who have received services."

A concern I would have, with my background in education, is that we need to measure whether the program is delivering what we expect it to deliver. We certainly need to measure whether it's reaching the children it's designed to reach. I wonder if you could elaborate on the answer you gave the auditor in terms of what you are planning to do to address that recommendation around program effectiveness.

**Ms Hill:** Thank you for the question. I think I will have Trinela Cane speak to our plans on performance measurement and evaluation. This is an area that we think is long overdue. We are also concerned, though, that it does include a number of different elements. Program effectiveness includes, as you said, determining whether children are benefiting from the program on a short- and long-term basis. Some of that actually will end up being a research initiative because we would need to follow the children. However, in the short term, we are concerned about looking at the program design and making sure we are making improvements, as well as

looking at the information we have to date to determine how children are benefiting from the program. So we have multiple parts to what we need to evaluate.

With respect to performance measures, I'll have Trinela speak to that.

**Ms Cane:** With respect to performance measures, the commitment we have made in response to the audit itself is something we had underway already, which is the development of what we hope to be a small course set of performance measures for the program that will be incorporated into our business planning process of the ministry during this fall period.

What we have currently by way of program measures deals much more with service outputs and with transactional types of data. With the creation of the new ministry, our minister and deputy are very focused on looking at outcomes-based approaches, which represent a fairly significant shift to the approaches taken in the past. With regard to that, our performance measures are going to be much more outcome-based this year.

I think the deputy has highlighted, in terms of the actual program effectiveness elements, that this is a difficult area, in part because what we do know from parents is that those who are receiving IBI services, for example—and the Provincial Auditor noted this as well—are very satisfied with the service for their children, and as we know, parents not able to access those services would very much like to do so on behalf of their children. So from an anecdotal perspective, we do have a lot of information on day-to-day progress on the part of children.

I think that as we start to look at outcomes, we do need to look at—even our own data systems are much more focused, as I mentioned, on transactional data. We need to move to much more of a case management approach. Our service providers, in fact, have their own case management systems, but as the deputy mentioned, we need to be looking at longer-term results on behalf of our children in the program, both to look at how they're doing in the short term and, I think, from a research point of view. As you know, evidence in this area is somewhat difficult to come by. There's a variety of evidence in a variety of areas, but I think part of what we want to do in the new ministry is to create a research chair for the study of autism, which is something that was announced last spring and we're pursuing it now. We are also looking at providing scholarships through the Ministry of Colleges and Universities to support that, so that people who are undertaking studies at the masters level and the PhD level will have some funds available to them to pursue studies in autism. So it's actually both a program effectiveness issue—and we are prepared to address the program design issues the auditor has identified—and also a longer-term research process that we need to make sure is in place.

To that end, I will also mention that the deputy made reference to an evaluation framework. We have made a commitment to evaluate the IBI program and in fact to develop evaluation frameworks for the school support

program and other programs that we're offering. We need to do it in a much more comprehensive way, and we will be undertaking that. We will have to pursue proposals through RFP processes through the spring, but we hope to have contracts in place—in fact, it is our plan to have an appropriate contract in place—by the end of the fiscal year to begin the program evaluation and the longer-term research agenda.

**Mrs Sandals:** Good. I am glad that we're taking a look at the program and actually measuring what we're doing so that we can get a handle on what works and what doesn't work in terms of program delivery.

Mr Chair, I'm going to defer to some of my colleagues.

**The Chair:** Mr Mauro?

**Mr Bill Mauro (Thunder Bay-Atikokan):** We'd be happy to allow the rotation to go and then come back.

**The Chair:** Is there any objection?

**Ms Martel:** You don't want to finish?

**Mr Mauro:** No, we want to use our time, but we're just allowing the—

**Ms Martel:** You mean that you're going to wait to see what I say and see how to respond.

**Mr Mauro:** We're just trying to be fair.

**Ms Martel:** Come on. I've been here longer than that.

OK, let's go to it. I have some general questions. Are these guidelines that you left on our table—preschool intervention program for children with autism program guidelines—the guidelines that were referenced in your October 8 press release as being the guidelines you're giving service providers with respect to their waiting lists?

**Ms Hill:** I don't have the October 8 press release in front of me.

**Ms Martel:** There's a reference to new guidelines that service providers were supposed to use for doing evaluations for the wait-lists. I'm wondering if these—

**Ms Hill:** I think I'll ask Cynthia Lees to speak to this.

**Ms Cynthia Lees:** Ms Martel, we have since reissued these guidelines to the service providers to provide the clarification on children who are five and under. I think there was some confusion; I think people had the impression that we were changing our eligibility for the program and that we were cutting children off the program. There was no intent to cut any children off. We have since reissued the guidelines to our service providers, along with a letter of clarification to the service providers.

**Ms Martel:** I have the letter of clarification. I'm assuming that what's attached to it are the new guidelines, then, because that's what I wanted to get a copy of. I only have a copy of the letter. So I can assume these are the new guidelines which are now being used that have been approved by the ministry?

**Ms Lees:** Yes.

**Ms Martel:** OK. Thank you.

My second question is on eligibility assessments. I understand that Kinark now, in an effort to deal with their wait-list and get their assessments done, are doing new

assessments for kids who are on the wait-list and refusing to accept assessments that would have been done either by Sick Children's or North York General, for example. I'm wondering why we're spending money on assessments when people have up-to-date assessments from, I think, reliable organizations. Do you have an answer?

**Ms Lees:** I'm not aware of that. I would certainly follow up. Our expectation is that if there are assessments that are done, then the service providers should accept those. We don't want service providers to do assessment for the sake of doing assessment. I would be happy to follow through with Kinark.

1120

**Ms Martel:** OK. I think Mr McIntosh, who is probably in the overflow room, has had that experience, so I'll make sure that Bruce talks to you before we finish that today.

I want to know how much additional money went to the agencies this year. Was it the \$10 million that was promised?

**Ms Hill:** I'll ask Cynthia to speak to the cash flow. Our expectation from the last contact we had with the regional service providers is they are on track to spend the full allotment for the new investment for the pre-school program. But we don't flow funding at the beginning of the year at 100% before people report back to us on how their spending is going.

**Ms Martel:** So you can provide us with the anticipated allocation to each of the providers? They must have been given some idea of how much money they were going to receive.

**Ms Hill:** Yes, absolutely.

**Ms Martel:** And we can have that list? Would I assume that list is going to add up to \$10 million?

**Ms Hill:** Yes, it will.

**Ms Martel:** I'll be looking forward to receiving that.

I want some clarification, because you talked—and somebody's going to correct me if I'm wrong—that there are benefits and services that families who are on direct funding get from the direct service model. Can you just repeat what those are for me again, please?

**Ms Hill:** I think Trinela can speak to the different components.

**Ms Cane:** My understanding is that the actual specific services that may be offered and the supports to parents may vary somewhat region to region and the intention is for regional service providers to respond to the needs as identified by parents. Certainly in discussions with the service providers themselves, they've given us an indication of the types of supports that are provided. They include things like documents and information for parents, referral to autism society chapters in the various locales. It includes the availability of individual workshops for groups of parents dealing with specific issues or more general issues. It deals with some specific supports to parents who have just learned of the diagnosis for their child, specifically focused on addressing some of the questions and concerns parents may have at the outset. In addition, my understanding is that there are

groups that may be provided in some regions for the children themselves, particularly in preparation for transition to school. So those are at least a short list of the types of services that are being provided.

I should also mention, separate from what I guess I would call the supports to parents, the service providers are also providing the eligibility assessment and the clinical assessment of the children. I hope that responds to the question.

**Ms Martel:** And the workshops for parents, do they pay for those themselves or is that covered by the direct service provider?

**Ms Cane:** The service providers will cover that.

**Ms Martel:** Let me ask about waiting lists. How many children would be on a waiting list right now?

**Ms Hill:** I will ask Cynthia Lees to speak to our most recent information.

**Ms Lees:** The recent information I have, Ms Martel, is that as of September 30, there were 950 children waiting to be assessed in the program.

**Ms Martel:** How confident are we that that number is accurate?

**Ms Lees:** We're as confident as we can be, Ms Martel. This comes directly from the service providers and we've validated this with the service providers.

**Ms Martel:** You'll understand my concern about your information, when the auditor has said that not only information from the ministry but information from the service providers was not accurate; it was incomplete, and not correct either. So when I look at that figure, you'll forgive me if I say I don't have much confidence that that's actually the situation.

Has that been arrived at as a function of saying we've hired 40 new therapists? Is that how the calculation has worked, or do you feel confident there are actually 250 more children, regardless of what happened on the therapists, who have actually come off the waiting list?

**Ms Lees:** This is the information we've collected from the service providers. They have assured us this is an accurate number, so we stand by the number with the service providers.

**Ms Martel:** Can I ask, of that 250, does that mean 250 are getting service, or is that 250 kids who have been assessed and some are receiving service and some will not receive service?

**Ms Lees:** This would be a combination.

**Ms Martel:** Ah.

**Ms Lees:** Some of the children would probably be deemed not eligible for the program; other children would certainly be assessed and move on to IBI services.

**Ms Martel:** It would be very helpful if you could give the committee the breakdown, because I would say the impression that has been left in the media recently that there are 250 children less on the waiting list is an impression that those 250 kids got service. I would like to know how many of the 250 actually qualified for service.

**Ms Lees:** We'll be happy to provide you with that information.

**Ms Martel:** That would be great.

Let me go back to the direct funding model—a couple of things in response to what I heard. My experience is that parents in most jurisdictions were never offered the choice. I don't know if she wants me to use her name. Is it OK, Deb? Deb Campbell was not given a choice, was on direct funding and was told she could wait on the wait-list for direct service for at least another year. The auditor also told us that, in two regions, the option of direct funding was not offered at all by the providers. That was in his report. Maybe you want to give me some clarification.

**Mr McCarter:** Maybe I could just clarify that. I think what we said was that, in two of the regions, there was no take-up of the direct funding option. As to the reason for that, we're not sure. I'd have to go back and check the wording, but I think we said there was no take-up of direct funding.

**Ms Martel:** My apologies, then. My concern is that in fact the offer is not being made. Why I lead to that is my concern that what's happening is a number of the lead agencies are perhaps more interested in ensuring that they maintain control of the service and they get the money than they are in ensuring that parents are able to get some money and get some service.

I've got to tell you that I was particularly offended by the comments made to the auditor about why some folks might not take up a direct funding model. This is a quote from the auditor's report. He can speak to it more if he wants, but he said, "Staff indicated to us that the direct funding option is most suitable for parents who are financially stable, speak fluent English and are capable of finding private sector therapists and administering the funding agreement." I found that pretty offensive, actually. I know a number of these parents, and no matter their level of education, they are tremendous advocates for their kids. They know where the services are. They're lobbying to try to get them. It's not a problem that they don't go out and try to get whatever they can for their children, whatever is being offered.

This leads me to my question around your review as you look at what you're going to do about direct service and direct funding. Give me some guarantee that these kinds of criteria—whether they speak English, whether they are financially stable and whether somebody thinks they're capable of making the arrangements to get the receipts in—are not going to be the basis for any decision you make about what to do next.

**Ms Hill:** Ms Martel, I think we've committed to looking at how to actually strengthen the program, and we are particularly concerned that the question of balancing building capacity in the direct service provider option and creating choices for families is addressed. We are very committed to doing that. What we tried to indicate was that the initial concept for the program was to actually advance choice, and if that's not working effectively, we are committed to addressing it.

Just to clarify, the challenges for some families have been brought to our attention. We're not saying by any stretch of the imagination that all families aren't capable.

We know that many families would prefer that option and we need to make sure that the options are delivered to both sets of families or any individual family—how we can meet both sets of families' needs—and we are committed to doing better in that.

**Ms Martel:** You'd understand, Deputy, though, if that's the attitude of some of your providers whom you contract with to provide service, that's not a very positive or helpful attitude, and it would explain why the option may not be provided to parents in the first place.

**Ms Hill:** I didn't interview the lead service provider who might have made those comments. I can't really attribute a judgment to the comment. We are aware, though, that some families have much more limited resources—I think you may acknowledge that—and certainly we want to make sure we meet the needs of those families as well.

**Ms Martel:** I think if it were a choice, though, between getting some service or no service at all, those families would find some of the financial resources they need. It's better than trying to pay for all of the IBI out of their own pockets.

**Ms Hill:** Absolutely. And I think the other aspect of it is that what we are most committed to doing is ensuring that some service is provided to all families.

**Ms Martel:** One of my concerns about the wait-list—I raised the case about the criteria and the ministry responded to that. I have a second concern about whether or not some of your regional providers may be in fact cutting the current number of hours that some of the current clients are receiving in an attempt to deal with the wait-list problem as well. Do you have any sense of that, or have you been making inquiries or trying to track whether or not that is also happening out there right now?

1130

**Ms Hill:** Actually, we have checked with the regional service providers about how they are progressing on hours of delivery. I think Cynthia can speak to that.

**Ms Lees:** It is not my impression that they are cutting back hours. Actually, the hours are increasing. It is something we certainly try to monitor. I can tell you, Ms Martel, that we are in weekly contact with those service providers. Part of bringing them together again in December is to look at all these issues and make sure that as many services as possible are being delivered to the families.

**Ms Martel:** If I might, Cynthia, I don't think some of these service providers would tell you that the way they're dealing with their wait-list problem is to cut down some services to clients. What I'd like to do, if you don't mind—I suspect there are a number of parents who would be quite happy to come forward and give you a sense of what's happening. When I get that, I'm going to share that with you. I don't expect that your providers are going to tell you they're doing that as a way to deal with their wait-lists. They're just not.

**Ms Lees:** I'd be happy to speak to the parents.

**Ms Martel:** I appreciate that.

**The Chair:** Thank you, Ms Martel. Your time has expired. Mr Mauro.

**Mr Mauro:** Thank you, Chair. Initially, I'd like to thank the committee and the ministry for being here, but the entire committee as well for unanimously endorsing the request for this special report as we all work toward a more open and enhanced service system for the children who are receiving these programs. Thank you to everybody involved in that decision.

Ms Hill, it was implied earlier that the school program that's been developed has little, if any, effectiveness in terms of service provision for children with autism. I didn't hear you have an opportunity to respond to that implication. I'm wondering if you can take a minute to try to address that for us.

**Ms Hill:** I guess how I would begin to comment on that is that we do believe we worked with a number of advisers in designing this program. We did not initiate this program behind closed doors. We worked with a number of people who are familiar both with educating children and with autism spectrum disorder. It was designed based on the principles of behavioural intervention. We feel it can add significant benefits to the school environment.

Cynthia was actually involved in working with those through a working group. I think she can speak specifically to the guidelines that were developed and, in a sense, to the evidence we brought forward to the program in order that we could design the most effective support.

**Ms Lees:** We worked very closely with a committee that had been put in place. The committee reflected people who had expertise and knowledge of autism. The committee made several recommendations to the ministry on how to establish this program and implement it. It was probably the best model we have had in a long time of the excellent collaboration and partnership between our ministry and the Ministry of Education.

The program is designed to support the educators who have those children in their classrooms, to provide them with enhanced knowledge and skills around how to manage and deal with those children so that they can be most helpful when they have those students, day in and day out, in their classroom.

What we have also tried to do is that it's not only a support to the actual teacher but a support to all the educators in the school. The consultants will also work with the teacher, with the teams—some schools have specialized teams that deal with autism. They will deal with those teams. They will work with the principals, they will provide workshops and training for teachers, and they will provide resource material to the school personnel. They will also help in the planning for those children. So they are certainly there as a strong resource to the school educators.

**Mr Mauro:** Thank you. Ms Hill, in your opening remarks you also made reference to the fact that there were unexpended funds left over in the program, which I think is alarming to all of us. It sounds like the explana-

tion for the unexpended funds was a lack of capacity to deliver the services. Is that accurate? I guess my question is, then, in terms of the nine lead agencies that are out there, does the under-capacity exist equally in all of the agencies, or are there some agencies that have more of a capacity to deliver services than others?

**Ms Hill:** I'm actually not sure I can be specific about which lead agency might be in a better position to ramp up and increase capacity historically. I think what I would say is that the first few years of this initiative were very challenging for service providers, and we have reached a completely different level today with the ability of programs to expend their allocations than we were historically. This is not uncommon. There are many government programs where, if you are particularly expanding in the human service sector, there are challenges in terms of meeting the objectives of budget over time.

**Mr Mauro:** I guess what I'm trying to get at is that you would expect that the lead agencies would have some sense of the human resources available to them to deliver the programs. If they have more money than they believe they can expend, what's the mechanism in place for those agencies to get back to the ministry to advise them—the funds are flowing quarterly, as I understand it, so in the second quarter or in the third quarter, to advise the ministry that we have this much money and we don't believe we're going to be able to spend it? If the funds could then flow back to the ministry to be redistributed to an agency that perhaps has an overcapacity in terms of its service provision capabilities so that some of the kids who are waiting for the service would then be able to get that service—are we doing that, and will we be doing that?

**Ms Hill:** Currently, I don't think we have concerns about the lead agencies' ability to expend the funds. However, we do have a very rigorous process of monitoring the expenditures that will help us reallocate if that was necessary in the program. I can certainly have staff speak to what that process is.

**Mr Mauro:** OK. So you're saying the problem was more historical. Currently, you don't believe we have that same challenge?

**Ms Hill:** That's right.

**Mr Mauro:** OK. Then I'm not sure what has changed, because our programs, the \$10 million that's aimed at the training programs and the collaboration with MTCU, from what I understand, that one-year program does not take effect till 2005-06. So those people will not be coming on stream until then to address an under-capacity, but you're suggesting that we've already addressed it now.

**Ms Hill:** No. What I'm saying is that the current allocations that we've given to the regional service providers will be monitored closely to ensure that they can continue to recruit and retain. So we have both short-term strategies and long-term strategies to ensure that there are sufficient numbers of therapists in the field generally. Those therapists may be hired by the regional service provider or they may be hired through the direct funding model.

We recognize that many of the graduates who might come from that program may end up in school settings, as well as educational assistants. It's a generic set of schools that can support a wide range of services. So we're actually strengthening a number of services by that initiative.

The funding that has been flowed to the community colleges through the RFP process is a distinct amount of money through training, colleges and universities. The amount of money for the chair is a distinct amount of money. The amount of funding for the school support program is another envelope of funding. So we're monitoring the expenditures in each of the envelopes.

**Mr Mauro:** We've addressed the capacity issue, then, in terms of the service provision to the kids.

**Ms Hill:** We will have to continue to address that. That won't be something that is solved overnight. It will be continually a question of ensuring that we are—

**Mr Mauro:** I'm sorry, I'm running out of time, and I don't mean to interrupt you. I thought you had answered my question, and now I'm not sure you have. So if there are going to be lead agencies that don't have the capacity to meet the mandate and the funding that they have available to them, is there something in place for those people to flow funds back to you or at least advise you?

**Ms Hill:** Yes, there is.

**Mr Mauro:** So next year, if we're back dealing with this issue again, we're not going to hear that money was not expended because certain service agencies didn't have the capacity to deliver a program.

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**Ms Hill:** We will be doing our utmost to ensure that we can spend the entire budget in this program. We think that's extremely important, whether it's through direct funding or direct service. However, we can't carry the funding over into the next year. That does not meet the rules of strong financial accountability. I think the Provincial Auditor outlined that, in fact, the way we had been ensuring that the funding we were flowing could be spent was done within a reasonable approach.

**Mr Mauro:** OK. Thank you. Mr Chairman, I'm just going to share my last few minutes with another member.

**Ms Di Cocco:** Do I have a minute?

**The Chair:** You have a couple of minutes.

**Ms Di Cocco:** Thank you so much. I just want to state again that transformation of how the government is doing its business is about some of the issues that you discuss. It's about an ability to measure results for the investments that we make.

For people who may or may not know this, it's kind of a new paradigm, believe it or not, in government. It's something that we are working on right across ministries in trying to make sure that this is the new *modus operandi* as we move forward. I'm glad to hear that the Ministry of Children and Youth Services is undertaking exactly this.

The government has a responsibility in all of this. No one—and I believe it was stated before that there's an intent or something, that the government isn't taking

responsibility. The government is taking responsibility for this, and that's indicative of the actions that have been taken to date. Part of that action is to applaud a review of the programs, so that we can better analyze what is missing.

That work is ongoing. There is no magic wand, that we suddenly say, "Everything is going to be fixed now." As much as we want to state, "It should have been done yesterday," there is an ongoing process to improve how we deliver the services. In that context, I guess, and with the whole process of measuring results and being able to address this system-wide, the work is ongoing, and there is an intent to get it right, as best we can. It has to be a reasonable expectation that we will be trying to get this right long-term.

When it comes to making the decisions of how we're getting it right, the ministry is not doing it in isolation; they're doing it with various stakeholders. Maybe the deputy can speak to that, about the process of coming to decisions as we change and shift the system, which is not done overnight, how we're going to improve that and who we talk to when we are making the decisions to bring about changes, and that it's not done in isolation.

**Ms Hill:** Thank you for the question. As you may be aware, the minister held a series of round tables across the province, where she was listening to both service providers and families and young people. That was very informative for the ministry.

In addition, in a number of our initiatives, whether it's in this area or in the area of child welfare or children's mental health, we are clearly working very closely with service providers, but we also do listen to what our communities are saying about how things need to be improved.

As you've said, Ms Di Cocco, it is a long-term transformation. There are many aspects to our work where we need to be removing barriers, improving services, addressing program changes. We are very committed to doing this. It's very difficult to do it overnight, but we are very committed to those approaches and see this as a process of collaboration. There is always the challenge of making sure that we're making the best use of our resources to meet as many of the needs as we can.

**Mrs Munro:** Much of our discussion, obviously, has centred around the auditor's report, but I think part of our interest in this was not only to ask the auditor specific questions and get some responses from him, and obviously giving you the opportunity to be here today, but also to look in terms of where we are going from here.

In the last opportunity that I had to provide questions, one of the things I referenced was needing your commitment in terms of best practices, and certainly understanding your comment, then, that it's the service providers that determine the ratio and things like that. Obviously, we have real concerns about those types of decision-making and where they happen.

My questions now reflect more of a sense of where you are going in the future and what kind of commit-

ments you can give us that we're not going to be revisiting this kind of issue in the near future. One of the things I'd like to begin with is asking you, what would be the difference between the training of those therapists who are qualified to do IBI now and those people you've identified would be in the 2005-06 program?

**Ms Hill:** There's a wide range of training backgrounds in those who might be IBI therapists. I think what I can do is have Trinela Cane speak to the intent of the one-year certificate program.

Not all IBI therapists, I don't believe at this point, would have a one-year certificate program. They might have a range of training from a community college setting, a university degree and also what I would call intensive training programs. Perhaps Trinela can speak to the intent of the certificate program.

**Ms Cane:** The deputy is right in terms of the current IBI therapists who are on staff as part of our current host of service providers. Many of them have degrees in different, related fields. It could be psychology, it could be early childhood education, it could be any number of either certificate programs or degree programs. We actually have quite a wide variety across the board. Each of those therapists has received at least two weeks of additional training specific to the role they're playing in the service provider's agency, as well as ongoing in-service training.

With respect to the certificate program itself, it is focused on intervention and providing the skills to do effective intervention to those students who are taking those programs. Our expectation is that they will come from a wide range of backgrounds but will all be focused on an interest in and a passion for providing direct intervention services.

The intention is that when they have graduated from the certificate program, they will not require additional training as they enter the workforce through the service providers or are available either through the private service provider network or available to school boards and others.

**Mrs Munro:** Could you just give us your sense of the future? Is the number of autistic children going up or going down?

*Interruption.*

**Ms Hill:** I am not a scientist—

**The Chair:** Pardon me. I'm not going to throw that person out.

**Ms Hill:** Certainly it seems that there is an increased incidence, and it's not understood what the causes are. Even as recently as the last two weeks, there have been articles in the media that have considered what might be some of the biological or chemical factors that might be contributing. It is a question I think all of us would like to understand better: Why? Therefore, there's the need to continue to have the research that is being done in medical settings to look at what is contributing to this.

**Mrs Munro:** My question is a really serious one in the sense that obviously what we are looking at here today provides a foundation in terms of future planning.

You've mentioned system and functional kinds of assessment, but clearly the value of intervention, which was the question raised earlier this morning, is an extremely important one.

So I think what we would like to hear from you is a commitment in terms of the ongoing sensitivity to the research, and as well a commitment in terms of timeline. Those two things, I think, go hand in hand.

As representatives within our communities, we need to go away today comfortable that you are making significant steps in the area of understanding the value of the kind of intervention we're looking at, as well as looking at what's happening in other jurisdictions, and that you're prepared to make some kind of commitment with regard to timelines.

For the people who are facing this issue today, the value of international studies and things like that don't have quite the same importance. They want to know about an analysis and, frankly, a conclusion to the issues around lost hours, the cost of direct services and the issue, that I raised earlier around direct funding and home-based service.

I think we need to come away comfortable that you are prepared to provide us with some kind of timeline on the here-and-now issues, but you're also giving a commitment on the long-term, go-forward issue with regard to training, research and best practices. Those are the things that, ultimately, are going to mean that we can take pride in the service we're providing. Today, we obviously have grave concerns about the kind of service that's being provided.

**Ms Hill:** Thank you for that question. We are committed to both a long-term perspective and resolving the short-term policy questions—they're not really policy questions; they're program design questions—that the auditor has asked us to consider. I can't be specific on when they will all be resolved. I wouldn't want to make a commitment I can't make. But we do feel very strongly that these are the central questions, and we do need to address them.

**Mrs Munro:** People would like, of course, more specificity.

**The Chair:** Are you finished, Mrs Munro?

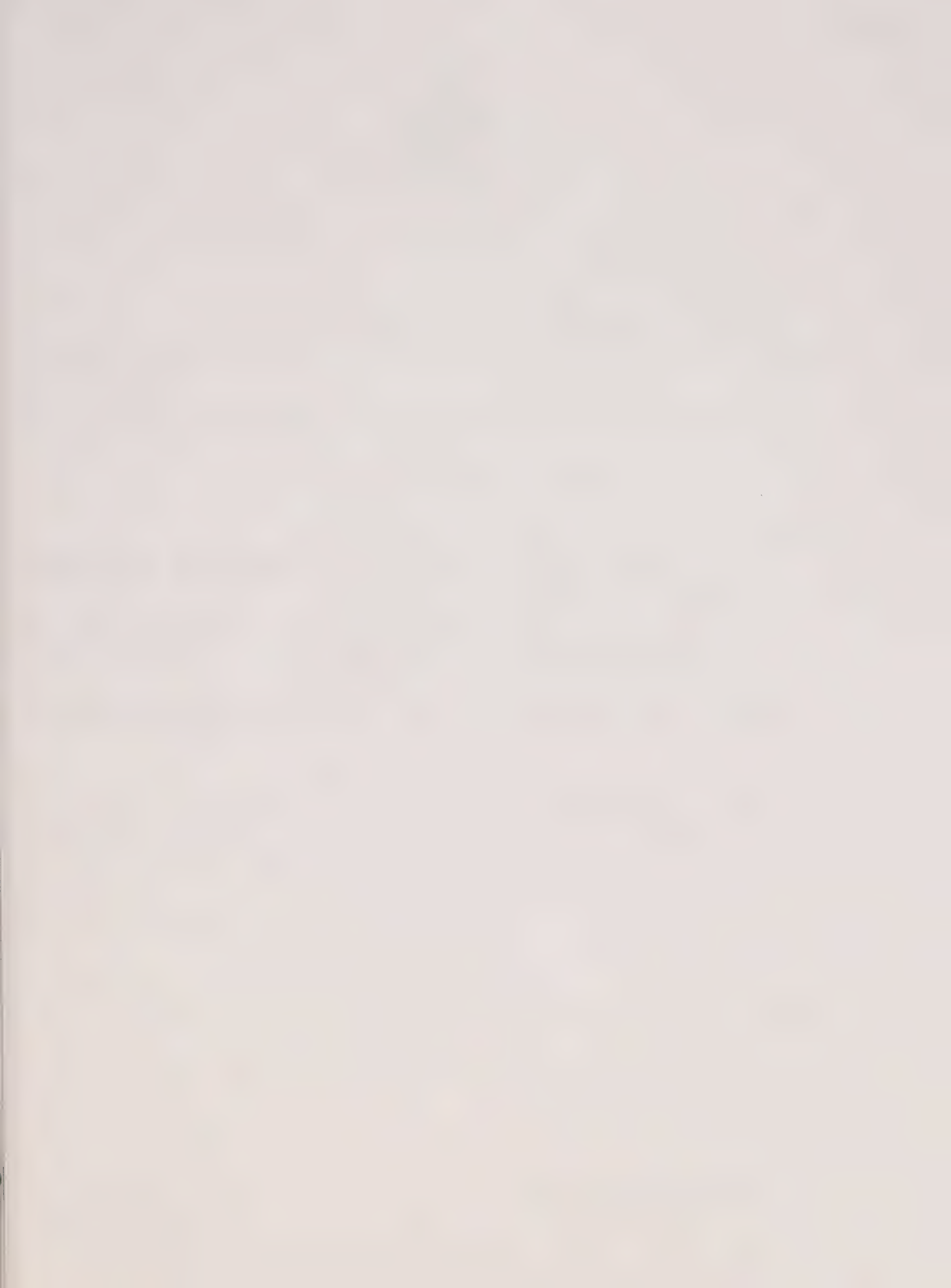
**Mrs Munro:** Yes.

**The Chair:** It's about five minutes to 12. You've been asked many questions. I believe you've undertaken to provide information to us, to members of the committee. I hope you will share that with all members of the committee and the Chair of the committee. I suspect we will be writing a report, as a result of the auditor's report and this meeting.

I want to thank each and every one of you for attending today. We will look forward to improvement. I think it's obvious, from the questions today, from the past conduct of all members of this committee, that we want to get to the bottom of this, and we want to get to the bottom of this as soon as possible.

Thank you very much. This meeting is adjourned.

*The committee adjourned at 1154.*



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First Session, 38<sup>th</sup> Parliament

# **Assemblée législative de l'Ontario**

Première session, 38<sup>e</sup> législature

## **Official Report of Debates (Hansard)**



Thursday 16 December 2004

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Jeudi 16 décembre 2004

**Standing committee on  
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Committee business

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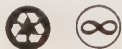
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Thursday 16 December 2004

Jeudi 16 décembre 2004

*The committee met at 1053 in committee room 1, following a closed session.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Norman W. Sterling):** The subcommittee of our public accounts committee met yesterday with a view of choosing which areas of the auditor's report we wanted to consider in our hearings, which we normally do each year. We usually take nine areas of the auditor's report, call the ministries in and have them explain what they're doing to meet the criticism in the auditor's report, and then we write a report back to the ministry indicating what we think should be done and how we want them to report to us in the future with regard to the matters raised.

You can see the selections of the subcommittee on the report that's before you. There are nine sections chosen there. They include: section 3.01, Office of the Public Guardian and Trustee, Ministry of the Attorney General; section 3.04, air quality program, and section 3.05, groundwater program, Ministry of the Environment; section 3.08, independent health facilities, Ministry of Health and Long-Term Care; section 3.09, employment rights and responsibilities program, Ministry of Labour; section 3.13, media tax credits, Ontario Media Development Corp and Ministries of Culture and Finance; section 3.14, maintenance of the provincial highway system, Ministry of Transportation; section 4.04, long-term-care facilities activity, Ministry of Health and Long-Term Care; and chapter 5, stranded debt of the electricity sector, Ministry of Finance.

Do we want to have a motion, then, by a member to accept the recommendations of the subcommittee as to the sections which the committee looks into? Julia, do you want to move that motion?

**Mrs Julia Munro (York North):** OK.

**The Chair:** Seconded by Laurel. Is everyone in favour? Carried.

*Interjection.*

**The Chair:** Which one?

**Mr Richard Patten (Ottawa Centre):** Having the committee meet right through Thursday.

**The Chair:** Yes. Since the House is returning from February 15 to March 9, because this is an unusual time for the committee to sit, the members of the subcommittee had some conversations as to how we should

structure our hearings this year. Normally we would sit sort of in the second and third or the third and fourth weeks of February to have extended hearings on the nine different matters which we have just chosen. There was some feeling by one or two members of the subcommittee that one of the problems we had was, by the time we received the report on a matter we had heard in February—we received the report in June of the year. Some members had a disconnect between the hearing we had in February and when they received the report. So there was some desire to bring together the reports that the research people were preparing for us and the actual hearing, so that people would have a better recall with regard to that. Maybe some of us who are getting a little older have that problem a little more than the younger people.

But the other part was that because there's essentially a six-week break between January 1 and February 15, many members of the assembly and this committee had already made plans with regard to when they were going to take a vacation etc. So we thought we would try, rather than having hearings during the intersession, to plan our meetings on Thursdays for the three weeks between February 15 and March 9, having one ministry each week. Rather than at 10 o'clock, we would begin our meetings at 9, go to 1, have lunch perhaps served while we're going through that meeting and then, if necessary, we would meet after question period. Hopefully, it won't be needed in many cases, but it might be needed where we wanted to examine or talk to the ministry further.

We thought we would try that for a three-week basis, and then if we wanted to alter the pattern of doing that, we might consider coming back in the week before March 29, when the Legislature is going to resume. We might also consider after that time that we would just continue on with the process that we're developing.

That was the thought in terms of how we would carry on for the first three sessions, going through February 15 to March 9.

**Mr Patten:** That sounds good. I agree with starting earlier and moving into the 1 o'clock period. The only thing I suggest is that it prejudices the members who don't live in the Toronto area who try to get back to their riding. Now they can't, because they're away from their riding most of the week, obviously. It knocks out Thursday night, which is a key night because when you're here, it's one of the few nights you can still be

meeting with your riding association or whatever it is, plus Friday. I just share that concern.

**The Chair:** Does the committee agree that we go ahead with that particular scheme at this time? OK. We'll have to get authorization of the House for us to sit during those hours, but we can do that when we come back on February 15.

**Ms Shelley Martel (Nickel Belt):** Mr Chair, can I just make one point?

**The Chair:** Yes.

1100

**Ms Martel:** I was the one who had expressed some concerns about setting that precedent for sitting longer on Thursday. I'm not terribly comfortable with that, but I recognize the dilemma we have in terms of the House sitting in a period where the committee would sit and people's inability to sit earlier in February, which would have been my preference, one day after the other, to get it done.

The only concern I raised in subcommittee—and there was a general agreement that it would be dealt with—is that sitting on the same days that we would normally sit to do reports would cut into the time we would have to do nine reports. So we also need to be conscious of the fact that the timing we are establishing may have that effect. If that is going to be the effect, I would want the committee to reconsider the schedule to ensure that what we are not doing is cutting down the number of public hearings we can actually have and the number of chapters we can actually look at.

**The Chair:** The structure of this committee is probably going to change as we go forward. We had a brief discussion about this as well, as the auditor starts to look into the MUSH sector, the municipalities, universities, schools and hospitals. I think we'll have a general discussion about it, but it might be advantageous to the committee—and I guess we can discuss this with the auditor—to have the auditor consider reporting on those particular functions in June, for instance, about six months away from what he does provincially.

This committee may find itself two years hence—because that's probably the timing we would work into it—sitting for a week or so in the summer to deal with the MUSH sector, and we'd be sitting in February to deal with the provincial aspect of the auditor. So I think there will be a little bit of structural change as we go forward, but I just put that forward as a possibility.

**Mr Jim McCarter:** If I can just interject, just so you're aware of the background, the way the new Audit Act works is it doesn't really allow us to go in and audit hospitals, the MUSH sector, right away. The way the act is phrased, we can't look at any dollars retroactively; it's only dollars spent essentially once the act is passed. So there's probably no point to us going in until the fall, at the earliest. You're going to have six months' worth of expenditures. Typically, on our value-for-money audits, it takes eight or nine months to do the work, to get through the reporting process and everything.

I had mentioned yesterday that the way the Audit Act is written, it allows the auditor to table one annual report a year. However, there is a section that says that if there is a matter of such urgency that the auditor wants to table another report, the auditor can table a report. So there is that avenue.

I kind of threw it out on the table yesterday that one route would be—this is getting pretty big as it is—if we have some audits on the MUSH sector, maybe it would make sense to table a second report, if it would be the wish of the committee to table that at a different time.

**The Chair:** That's certainly something we'll take under consideration. The new Audit Act has been passed, but it hasn't been proclaimed, I don't think. Or does it kick into effect automatically on April 1?

**Mr McCarter:** I think it has been. I think it's the other one, the advertising one, that has not been proclaimed yet. It has had third reading but not been proclaimed yet.

**The Chair:** So it automatically kicks in on April 1.

The following sections, in terms of the subcommittee, would be the first ones to be considered: The Office of the Public Guardian and Trustee, the independent health facilities, and the stranded debt of the electricity sector. We had another one, a fourth one, long-term-care facilities activity. So we thought we would name four—Julia?

**Mrs Munro:** I think the “or” in there was simply the fact that we had potentially two from the same ministry. The idea was that if that represented a problem, to have two from the same ministry in the course of three weeks, the “or” is there. It would be the independent health facilities or the stranded debt.

**The Chair:** I think the best idea would be to put four out and see what they can schedule for us and for the committee. The clerk can report back to me as to how those negotiations are going and we'll plan for three of the four, beginning the week of February 15. Is that agreeable to everyone? OK.

## COMMITTEE BUSINESS

**The Chair:** That takes care of all of the business, I believe. Oh, yes. There was some question as to whether or not the committee wanted to prepare a report on the intensive early intervention program for children with autism. As you know, we had a report prepared by the auditor. We had the ministry in. It has not been the normal practice to prepare reports in those cases, but I thought I would raise the issue with you as to whether or not the committee chose to do so. Any comments?

**Mrs Munro:** I appreciate the fact that it hasn't been the practice to do that, but I think a lot of issues were left dangling in the public hearing part of the process. I wonder if, rather than a report, we couldn't ask that the ministry report back to us. It's not unusual for us to do that with regard to things in the auditor's report. It seems to me that when they came, they already knew the issues around the two methods of delivery of service, the question of even including the subcontractors in their

meetings. I think it would be appropriate to determine a timeline and they should be responsible for coming back to us on specific issues that we raised, as opposed to a report.

**Mr Patten:** That makes sense. The ministry is now in charge. It's brand new. They've been working like crazy. They're a very small ministry. This is, as you know, very complicated, based on trying to respond to a totally inadequate database, which they're working on. I think they just need time to put the things in place and respond to it. So I would certainly support that.

**The Chair:** Shelley, did you have a comment?

**Ms Martel:** Two things: There was information that I requested on behalf of the committee, and I've been in contact with Cynthia Lees several times to find out when that is coming. I got a voicemail message from her yesterday saying that the package is complete and should be coming to the committee by tomorrow. So information about questions that I raised will be coming back to everybody and will be available in January.

It's true we haven't done a report on the special reports that have been done, so that would be a little bit out of practice. We haven't had very many, but of the two in the last four years, we didn't do any response. I think it would be interesting to have them come back, and I wonder if we can put in our heads a potential timeline for that, whether or not that is something that we can, as a committee, agree to doing before we recess in the June session. Is that a possibility? That would give them a number of months to respond to what was raised. In fairness, we should do that, and if we look for some opportunity in June, if that's a possibility, I think that would give them enough time to work toward that and try and make some of the corrections that need to be made.

**Mr Jim Flaherty (Whitby-Ajax):** I just want to take the opportunity to agree with Ms Martel of the NDP, since I don't often do that.

**The Chair:** So what is the desire of the committee? Do we want to have the ministry back to report to us on their progress? What's the timing here?

**Ms Laurel C. Broten (Etobicoke-Lakeshore):** Six months, I guess it would be.

**The Chair:** From when they were in front of us.

**Ms Broten:** Perhaps what we could do is have the clerk or yourself, Chair, write a letter thanking them for coming back, indicating that the committee continues to have an interest in pursuing the follow-up of the developments in this area and it is our intention to ask them to come back approximately six months from the time that they came. As we look at our schedule, we can perhaps target one of our last meetings before the end of the session as an opportunity for them to come and provide us with an update.

1110

**The Chair:** Why don't I say they should be prepared to come in late May or early June? Because we don't know how long the session's going to last. I'll write that letter on behalf of the committee then, OK?

**Ms Broten:** Thank you.

**The Chair:** Is there any further business?

**Mr David Zimmer (Willowdale):** I just have a question to Jim. At the meeting in Fredericton of the Canadian Council of Public Accounts Committees, did they generate any papers or hard copy—

**Mr McCarter:** I can only speak from the auditor's side. We do minutes and things like that for the auditors' meeting. Typically what happens is we have the general session and then it is split up. Basically the public accounts committees met and then the auditors met. For the auditors' meetings we have minutes—

**Mr Zimmer:** But there are no articles or papers or anything?

**Mr McCarter:** There are no articles or papers.

**Mr Zimmer:** It sounded like a very interesting topic, and I thought there might be some articles on the material that was presented.

**The Chair:** What's that institution in Ottawa?

**Mr McCarter:** The Canadian Comprehensive Auditing Foundation.

**The Chair:** Yes.

**Mr Zimmer:** The Management Institute?

**The Chair:** No, the Canadian Comprehensive Auditing Foundation in Ottawa. The committee might want to talk to them at some point in time in terms of what their ideas are with regard to the whole process of the committee. They seem to have one presentation.

One of the frustrations you find when you talk to some of our colleagues is that a lot of the provinces aren't even into value-for-money audits and therefore their experience in this area isn't that great. Some of the provinces don't have any research help with regard to their committee. Nova Scotia, for instance, appears to be very keen in the whole area, but they're not producing any reports because their committee doesn't have the help of researchers to construct the report.

It was really driven home to me how important the researchers are to this particular committee in producing work and actually encouraging the ministries to respond to the auditor's report.

I don't know; maybe we should be looking further afield. I understand there's a conference in February in Australia that I know all members of the committee would like to send their Chair to.

**Ms Martel:** Chair, can I just raise a point of order before we leave? On behalf of all the committee, I'd like to congratulate Jim McCarter for his appointment. We look forward to continuing to work with you.

*Applause.*

**Mr McCarter:** It's a great honour to have the responsibility, and I have to say it's a great committee to work with.

**The Chair:** I'd just say for the purposes of Hansard, there was applause from almost everybody.

**Mr Zimmer:** Just a question maybe to the legislative research folks: Is it possible for someone to do up a literature review on public accounts issues?

**Mr Ray McLellan:** You're saying nationwide or Ontario?

**Mr McCarter:** Or worldwide?

**Mr Zimmer:** Whatever catches your eye. I want to start reading into the whole issue. I don't need the literature, just a list of materials that I can—

**Mr McLellan:** Current literature?

**Mr Zimmer:** Yes.

**Mr Patten:** Some of the issues that are dealt with in the Canadian jurisdictions, for example, would be a good start.

**Mr Zimmer:** Yes, and where I can find the stuff.

**Mrs Munro:** In the parliamentary review, if that's the right name for it, the Commonwealth Parliamentary Review, I've certainly come across articles over the years that deal with this issue. I think the Chair's comments about the difference between us and other provinces make it difficult in the sense that it's not always an apples-to-apples kind of comparison, but if you look at some of the other Commonwealth jurisdictions, there I think you get into some of the issues. I know the auditors have looked at issues like value for money, the questions of governments privatizing services. I assume that's the kind of thing you're talking about.

**Mr Zimmer:** Yes. What I'm looking for—and I don't know if it's the auditor who does it, or the research folks—is a reading list.

**Mrs Munro:** Yes, but I think the Commonwealth areas are the best ones.

**Mr McCarter:** There's some information out there, for instance, on best practices for public accounts committees.

**Mr Zimmer:** Can somebody organize that?

**Mr McLellan:** I will. There was an article recently in the Institute of Public Administration's journal by John Malloy up at Carleton. He did a comparative overview of public accounts committees across—

**Mr Zimmer:** That's probably a good place to start.

**Mr McLellan:** I think we had talked about this actually during the summer, and there were a few areas. I don't know how accurate they are, but anyway that's a very good overview of provincial committees.

**Mr Zimmer:** I'll start there, then, if you can get me the citation before Christmas.

**Mr McCarter:** There is quite a difference. The auditors kind of look to Ontario and the feds as being fortunate, because our public accounts committees are

very active relative to the other jurisdictions. We're sort of looked upon as, "You lucky guys"—you know?

**Mr Zimmer:** Thank you. I can start there.

**Mr McLellan:** I will get that to you.

**The Chair:** The other one that would be interesting, Ray and Elaine, would be to find out, are there in fact any other jurisdictions doing the equivalent of the MUSH sector?

**Mr McCarter:** There are some jurisdictions that have the ability to go in and look at the MUSH sector. I know a number of jurisdictions are much more—our work is about 75% value-for-money. We are way at the value-for-money end, as opposed to a number of jurisdictions who have the ability to go to hospitals, but they do a financial statement audit.

To be honest, the auditors are meeting for a couple of days in January, and one of the things that I was going to raise was, who else is doing work in this area? Maybe there's some latitude for two or three of the auditors to, get together and do work in areas, in a hospital.

**The Chair:** The interesting part for me in terms of that whole area is comparative accounting. When the auditor's looking at the province of Ontario, there really isn't another comparison that we can look to and say, "How are we doing?" because the regions across Canada are so diverse. But when you get to comparing the Ottawa Hospital to the Toronto General Hospital, a school board to a school board, a college to a college or whatever it is, there will be more opportunity, I'm sure, for that kind of thing to occur. It's going to be difficult to set how those benchmarks are going to be accepted.

**Mr McCarter:** I'd be interested in your thoughts on this, but one of the things I would be interested in is if there were two or three other Auditors General who had the mandate to do, say, hospitals or school boards, and let's say the three of us said—just pick something like emergency room management. If three other jurisdictions decided to do it, that might be a very interesting report too, from that perspective as well. But I'm not sure about the interest of my colleagues, because we're very value-for-money oriented here in Ontario.

**Mr Zimmer:** That's a good place to start.

**The Chair:** This meeting is adjourned.

*The committee adjourned at 1118.*



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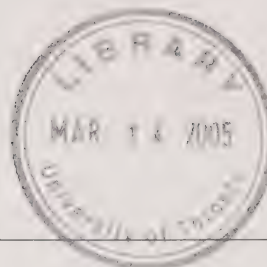
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**Assemblée législative  
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Première session, 38<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Thursday 17 February 2005

**Journal  
des débats  
(Hansard)**

Jeudi 17 février 2005

**Standing committee on  
public accounts**

2004 Annual Report,  
Provincial Auditor:  
Ministry of the Environment

**Comité permanent des  
comptes publics**

Rapport annuel 2004,  
Vérificateur provincial :  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Thursday 17 February 2005

Jeudi 17 février 2005

*The committee met at 0938 in room 1, following a closed session.*

2004 ANNUAL REPORT,  
PROVINCIAL AUDITOR  
MINISTRY OF THE ENVIRONMENT

Consideration of section 3.04, air quality program.

**The Chair (Mr. Norman W. Sterling):** Good morning. My name is Norm Sterling. I'm the Chair of the public accounts committee. If any ministry staff who were there in 1999 don't know that, you're fired, as Donald Trump would say.

Anyway, welcome, Ms. West. You're the deputy minister there. Perhaps you'd like to introduce the people who are sitting with you at the table. I notice you have a number of people behind you, and I guess the best thing would be to introduce them if they come forward to assist.

**Ms. Virginia West:** Thank you, Mr. Chair. I have sitting at the table with me Carl Griffith, who is the assistant deputy minister of the environmental sciences and standards division, and Joan Andrew, who is the assistant deputy minister of the integrated environmental planning division.

You're right, Mr. Chair; we do have other staff—assistant deputy ministers and others—here to assist in answering any questions that you may have. They'll introduce themselves as they come to the table to respond.

I do have some opening remarks that I think have been passed around to the committee members, and if I may, I'll just start with those.

Again, thank you for the opportunity to discuss the Ontario Provincial Auditor's report on the Ministry of the Environment's air protection program.

Providing safeguards for Ontario's air is an important part of the ministry's mandate to restore, protect and improve the environment. It ties in directly to our goals of ensuring public health and the vitality of our communities. We see these sessions before the standing committee on public accounts as an important way to fine-tune our efforts. The feedback we receive during this process helps us do a better job on behalf of the people of Ontario.

We recognize that, despite our best efforts and intentions, there will always be room for improvement. We

welcome the valuable comments that have been made by the Provincial Auditor. They provide constructive advice that can serve as the basis for effective action on the part of the ministry. I can assure you that the Ministry of the Environment takes the auditor's report very seriously and we are taking steps to deal with all of his concerns. This morning, I will take you through a selection of the auditor's comments and how the ministry is responding to them. Following my remarks, I and the ministry staff here today will be happy to answer any questions that you may have.

As I noted, with me here are Joan Andrew, assistant deputy minister of the integrated environmental planning division; Allan Gunn, assistant deputy minister of our corporate management division, who is sitting behind me; Carl Griffith, assistant deputy minister of the environmental sciences and standards division; and Debra Sikora, who's here on behalf of Michael Williams, who is the assistant deputy minister of our operations division. We're supported as well by additional senior staff who will be able to provide more detailed responses if necessary.

Ministry actions and improvements being undertaken as a result of the auditor's report fall within three categories: program and policy planning, air quality monitoring and compliance with legislation and policy.

I'll begin with program and policy planning. The auditor has noted that, based on ministry projections, the province will not be able to meet its air quality targets. The auditor further observes that no new action has been taken by the ministry to meet its target for volatile organic compounds. The auditor also notes the lack of a formal target for Ontario for greenhouse gas emissions reductions.

The auditor has observed that the ministry's current air standards and guidelines are outdated. He points out that, since 1996, standards for only 18 of 76 high-priority air pollutants have been developed, updated or reaffirmed. Since 2001, no air quality standards have been created or revised. Staff here today can provide the context for and the details on how the ministry is responding to each of these observations, but perhaps I can offer some initial observations. The minister has acknowledged that further efforts are needed to improve air quality. Ministry projections indicate more reductions are needed to meet emission reduction targets. The Ministry of the Environment continues to strengthen existing programs and analyze options for new programs to improve air quality

and meet our targets. For example, a major new initiative, a five-point plan for cleaner air, was announced by the government in June 2004. It will set annual limits of smog-causing emissions from industrial sectors that have never had such limits before.

Earlier this month, our ministry posted a draft regulation setting out limits of two key smog-causing pollutants for 31 large facilities in seven industrial sectors. Their allowable emissions limits will decrease in 2007, 2010 and 2015. The ministry's five-point plan would also set new standards for emissions of 29 harmful air pollutants. Many of these standards are related to specific volatile organic compounds. The ministry has also strengthened the Drive Clean program, which helps reduce volatile organic compound emissions.

Ontario has signed a memorandum of understanding with the federal government on climate change and is working with the federal government to design programs and requirements to reduce greenhouse gases. In June 2004, the minister released Ontario's first implementation plan for meeting Canada-wide standards for ozone and particulate matter. The report reviews actions underway to reduce nitrogen oxide, volatile organic compounds, sulphur dioxide and particulate matter, and reviews new programs being considered. The government's commitment to develop clean energy sources and to close coal-fired generating stations will help reduce emissions of nitrogen oxide, sulphur dioxide and particulate matter.

Public consultations are ongoing on actions to reduce ozone-depleting substances in line with Canada's national action plan.

Ontario is also working with more than 15 industrial sectors on options for reducing volatile organic compounds. Ministry staff continue to work with the federal government on actions to reduce volatile organic compounds from consumer and commercial products sold in Canada.

Since announcing the five-point plan for cleaner air in June 2004, the Ministry of the Environment has been consulting with the public and stakeholders on proposals to introduce new air standards, new air dispersion models and a risk-based decision-making process. Our approach seeks to balance the protection of local communities from the effects of air pollution with factors including timing, technology and economics.

We also had a pilot project with five large emitters. We have used it as the basis for a proposed risk-based, decision-making process now undergoing public consultation.

The Provincial Auditor's report finds that there are no periodic renewal requirements for certificates of approval issued to companies; there is no process to assess risks posed by outdated certificates; and tracking of existing certificates needs to be improved.

The auditor also points to delays in processing of applications for certificates of approval.

The ministry is committed to, and will be developing, a risk-based performance management approach to

issuing approvals, building on the risk-based performance management approach for inspections. This will result in categorizing the regulated community into different risk categories. The ministry will then establish an approvals process that will allow the focusing of its review function on high-risk sectors. Improvement to information systems will likely be a critical component of this change.

The ministry agrees that the development of a checklist can assist its reviewers, and this will be developed to ensure that certificates of approval include relevant provisions for compliance with regulations, guidelines, and government policies, as required.

With a move to risk-based performance management, there is a potential for a reduction in application processing time by focusing on high-risk applications. However, as with the current approach, it should be recognized that complex applications may continue to take an extended time for review.

Turning to air quality monitoring, the Provincial Auditor has noted that the air quality index does not consider the combined health effects of monitored pollutants. Although Ontario's current AQI represents the state of science, monitoring and reporting of key air contaminants, the ministry is in the process of reviewing its descriptive ratings. We will address the issue of poor thresholds and their relationship to ministry and/or federal air quality standards.

Ontario is participating in the development of a new health-based national air quality index, which will include cumulative health impacts associated with multiple pollutant exposure. This initiative is being led by the federal government and involves Health Canada, Environment Canada, the provinces, municipalities, environmental groups and other stakeholders.

With respect to our emissions reduction trading program, the auditor states that it is ineffective in reducing sulphur dioxide emissions and that the emission limit for sulphur dioxide exceeds current total emissions from the electrical sector. The auditor also notes that sulphur dioxide limits are applied to the electricity sector only.

The ministry will continue to review the opportunities to improve Ontario's emissions trading program to ensure strict environmental protection through emissions caps and incentives to all emitters to reduce emissions.

The regulation reduces sulphur dioxide emission caps to 131 kilotonnes in 2007, down from the 2002 limit of 157 kilotonnes. This will ensure action is taken to reduce emissions, and these limits will be reviewed as new programs are introduced.

To help ensure that the use of credits is not excessive, the current regulation limits the use of credits to 33% and 10% of the allowance use for nitrogen oxide and sulphur dioxide respectively. These limits will also be reconsidered as experience is gained with the program.

#### 0950

The ministry continues to assess programs to reduce emissions. In June 2004, the ministry proposed extension of emissions caps regulations to capture seven industrial

sectors, including major sulphur dioxide emitters. As I mentioned earlier, a draft regulation has been posted that lays out these emissions limits.

Moving on to Drive Clean, several issues were raised by the auditor. Among these issues were: The oldest vehicles can have a 50% failure rate; exempting vehicles 20 years old or more is inconsistent with other jurisdictions; there are incidents of non-compliance with program rules at facilities; more than 1,400 Drive Clean facilities have been engaged in temporary off-line testing, exposing the program to risk because data can and has been lost; and one certificate number had been presented more than 400 times. Duplicate certificates were accepted even when the duplication was flagged by the computer. Ministry estimates indicate that almost 40,000 emission certificates not in the system had been presented at licence renewal offices.

Drive Clean is having a positive effect on the environment and on the health of Ontarians. Indeed, by the tests and measures completed, the Drive Clean program is responsible for the removal of hundreds of thousands of tonnes of poisonous gases, greenhouse gases and smog-causing pollutants, including particulate matter from our air.

In keeping with the program's commitment to continuous improvement, the ministry has initiated a program review that will report back to the minister by summer 2005. The program review will examine future options for the program from a science-based perspective, taking into consideration improvements in vehicle emissions control technology, fuels, public transit usage, Drive Clean results and overall air quality. As part of the program review, an independent consultant is conducting an evaluation of the Drive Clean program that includes a review of air quality and related issues in Ontario based on the ministry's air story; a review of best practices in other jurisdictions with vehicle inspection and maintenance programs; an evaluation of the program's costs and benefits to date and in the future; and an evaluation of the program's effectiveness in achieving its goals and objectives, including the strengths and weaknesses of the program's existing design features and parameters. The evaluation will examine model years subject to testing, the use of conditional passes and the compliance program. Current information suggests that older vehicles are generally driven about one third the total distance of newer vehicles and account for fewer than 1% of all cars driven in Ontario.

As of July 2004, the repair cost limit that was first set at \$200 became \$450 throughout the program area. It allows vehicle owners to defer emissions system repairs that raise their repair costs over that limit and obtain a conditional pass to renew their vehicle registrations. The repair cost limit ensures that a vehicle's emissions system faults are diagnosed and that at least some emissions-related repairs are performed for the benefit of our air quality. It is expected that implementation of the increased repair cost limit throughout the program area will result in a larger number of vehicles being fully repaired.

In situations where only partial repairs are made to the vehicle, the emissions control system will continue to malfunction, and fluctuations in emissions can be expected.

Effective August 2004, the ministry reminded all facilities of the standard procedures related to the two methods of emissions testing and the consequences of non-compliance. The ministry has also implemented a daily exception reporting and follow-up process to identify facilities whose test records show suspect uses of improper testing procedures.

In 2003, test and repair complaints were received at an average rate of one for every 5,000 tests conducted. That is a very positive indication of customer service. Variations in test results are typically a function of intermittent control system problems. A variety of quality assurance procedures are in place to ensure ongoing test consistency, including facility audits based on relative incidence and risk of test anomalies. The current guideline provided to inspectors helps identify vehicles that cannot be safely tested on the dynamometer, but cannot be all-inclusive since any vehicle can be customized.

The ministry has identified the issue of duplicate certificates as a serious concern and has been working with the Ministry of Transportation to address this issue. In July 2004, the ministry and the Ministry of Transportation implemented a system to prevent the use of illegitimate certificates. As of December 1, 2004, illegitimate duplicates are no longer accepted at MTO driver and licence-issuing offices. Where duplicate certificates are identified, the certificate is refused at the licensing office and the customer is directed to call the Drive Clean call centre. All incidents are then reported to the Drive Clean call centre and to the ministry's investigations and enforcement branch for follow-up. The ministry has provided the OPP with information about illegitimate certificates. These matters are now being investigated by both the OPP and the ministry.

Finally, I would like to turn to the Provincial Auditor's concerns about compliance with environmental legislation and policy. I will focus on inspections by the environmental SWAT team, and close with comments on issues the auditor raised around air inspections.

The auditor notes that the ministry could not determine the status of 30% of corrective actions required as a result of SWAT inspections. More than 20% of the auditor's sample of ratings recorded in the inspection database did not match the ratings that SWAT inspectors had assigned in their inspection reports. The SWAT team measures its effectiveness by numbers of sectors selected for inspections and the number of facility inspections performed. Effectiveness has not been measured by assessing the inspections' impact on the environment.

The environmental SWAT team's standard operating procedure concerning compliance with provincial officer orders is to require confirmation by the facility owner that the work ordered has been undertaken and completed. SWAT monitors report-backs by facility owners to assess compliance progress. SWAT will undertake a

review of its existing standard operating procedures as well as its current inspection files to ensure that procedures are being followed and compliance follow-up is happening as required.

SWAT will assess the data input into the information system to ensure data quality, accuracy and integrity. Deficiencies identified by SWAT staff will be addressed for correction. With system enhancements to be completed by March 2005, as well as close monitoring of data quality through existing business practices, SWAT will be able to better monitor compliance progress and ensure the accuracy of data input.

The ministry agrees that the development and implementation of outcome-based performance measures can be used to assess and enhance the effectiveness of ministry inspection programs, including SWAT. The ministry is currently developing such measures.

The auditor raised a number of issues around air inspections: He raised that the ministry did not have a formal risk-based approach for selecting which facilities to inspect; he noted that the ministry had not inspected one of the largest benzene-emitting facilities in the province since 2002; and he expressed concern about the number of air inspections performed annually.

During the 2003-04 fiscal year, the ministry conducted a risk-based inspection pilot program focusing on generators of hazardous waste. More than 400 inspections, covering all 15 district offices, were conducted as part of this initiative. Based on lessons learned from this successful initiative and on the SWAT's risk-based sector inspection process, the ministry introduced a formal risk-based approach to inspections for 2004-05, and will continue to refine that approach over the next few years.

Candidate facilities being assessed for inspection are identified using a risk-based selection process that categorizes facilities based on their compliance history and environmental and health-based risks. Over the past four years, the Ministry of the Environment has more than doubled its proactive inspections. In the 2004-05 fiscal year, MOE expanded the use of risk assessment for all SWAT and district inspection activities. The Ministry of the Environment's operations division has steadily increased proactive inspections. In 1998-99, the ministry conducted 4,552 proactive inspections. By 2002-03, that figure was 11,750 inspections and, last year, the division completed 15,036 inspections.

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I want to thank the members of the standing committee on public accounts for the opportunity to address the Provincial Auditor's report on our air management system. We are working to meet the recommendations contained in the report. A lot of work remains, but we value this exercise, as well as an opportunity to improve our ability to protect human health and the environment.

My staff and I will now answer any questions you may have.

**The Chair:** Thank you very much. Our plan is to go from now until 1 o'clock, if that's what's required, and then we will continue after question period, if that is

necessary as well. It's my hope that that won't be necessary.

I understand as well that around 12 or 1 o'clock, we'll have some lunch next door. We'll try to inform the members of the committee. I understand the ministry has provided some sustenance for their people as well in the next room. So we'll try to tie that in, and perhaps some members of the committee will have a little bit of a sandwich during the time when the questioning takes place as well. We're pretty fluid on that.

We'll start with questions now.

**Mr. John Wilkinson (Perth-Middlesex):** Good morning, Virginia. Thanks for coming in. And to the whole team, good morning.

I just wanted to ask you about the status—I know you mentioned two areas where we're working with the federal government, particularly the memorandum of understanding on climate change, but also on the idea of developing a new health-based national air quality index. Could you just give us a status update on how those negotiations are going?

**Ms. West:** That's obviously quite timely, certainly with respect to climate change. Perhaps I can ask Joan Andrew to speak to the issue of climate change, with some assistance, and Carl Griffith will speak to the air standards question.

**Ms. Joan Andrew:** Last spring, the minister signed an overall memorandum of understanding with the federal government on co-operation on climate change, with some specific opportunities to negotiate sub-agreements, I guess they would be, as things come up. We've been working closely with the federal government at a staff level on a variety of issues on climate change, particularly related to helping the federal government understand some of the issues related to Ontario's electricity-generating sector and the forecasts they had made about that.

We have also been working with the federal government and are anticipating hearing from them relatively shortly on participating. We've coordinated across the Ontario government an initiative that pertains to attempting pilot projects, looking at ways to encourage reductions of greenhouse gases, both within the government and in partnership with some of the broader public sector and private sector stakeholders that ministries work with.

I think we are waiting now to see what the federal government's final decisions are with regard to their climate change plan, to decide whether there'd be formal agreements between the two governments.

**Mr. Wilkinson:** As a follow-up then, the other thing I noticed about our need to—since we're all the same airshed with our friends in the Ohio Valley, my understanding is that about 50% of our pollution is actually just trans-border. The work that we're trying to do so we use the same standards and we're measuring the same things—I believe we have an initiative on that. It's almost like they were on imperial and we were on metric. So we weren't kind of talking the same language about being able to monitor these things. Are we working on

that as well so that when we get into these air dispersion models and we're going to a risk-based system, we have to make sure that we're monitoring and working with, I suppose, our American colleagues to make sure we're getting the same data that we're looking at so we can get a handle on that.

**Ms. Andrew:** There are some international agreements about how you gather and collect data. Environment Canada actually negotiates the international agreements and we participate with them in that. But there is a pilot project right now looking at the airshed of southwestern Ontario. Actually, I'll turn it over to Carl.

**Mr. Carl Griffith:** Thank you, Joan. If I could first get back to your question on the air quality index, let me begin by saying that we are currently looking at Ontario's air quality index and looking for better ways to make that more informative in terms of the ratings that we use. Secondly, we are working with several federal departments on a national health-based air quality index, which will bring into play the cumulative impacts of various substances. But if you would like up-to-date negotiations or where we are with the federal government and the other stakeholders on that, I would ask one of my colleagues to come up, if you'd like.

**Mr. Wilkinson:** Yes, because we have to understand that in Ontario we're not just doing this in a vacuum. The airshed is everywhere, so there's a federal aspect to it and there's also an international aspect to it.

**Mr. Griffith:** Yes, and we are involved, both working with the federal level as well as when we're talking with the international community.

**Mr. Wilkinson:** Just following up on an earlier question we had with the auditor—of course, his recommendation, just in a generic sense, is the need for us to move to a more risk-based system, from an auditing function, about how the ministry is doing. The auditor was telling me that, of course, it's not up to the auditor to tell our ministry, which is very technical, how to assess that.

You have a number of pilot projects that you're using to try to create these new risk-based systems to improve our efficiency. Can you give us an update on how that process is working? One day we'll be held to account on that, I'm sure—two years from now, when we look at this and whether we've got it right.

**Ms. West:** I think, as we look at risk-based methodologies, obviously we can learn from different sources and different areas as to how that actually can be improved. I think we've developed some very sophisticated approaches. Are you talking in terms of inspections, Mr. Wilkinson, or just in terms of the general impact?

**Mr. Wilkinson:** Yes. The auditor was saying, for example, on certificates of approval, that there are 30,000 and we can't do them all, so we really need to look at risk-based. But I noticed that throughout your presentation, Deputy Minister, you were saying that there's an agreement, or there's a new focus throughout the whole ministry on risk-based. So it's an approach that's been recommended by the Auditor General. You've said you're doing that. I'm just trying to get an idea for this

committee, because I think this will be an issue a couple of years from now as we revisit this, how that approach is being implemented throughout the ministry; I realize there are a lot of files, not just this one.

**Ms. West:** Absolutely. I agree with you in terms of working our way through this and gaining more and more experience and being able to measure the value of that risk-based approach in terms of auditing and improving the outcomes on the environment—we're going to learn as we go through it. I think we've had an opportunity through a number of pilots that I reference and through the SWAT team's efforts as well that started to inform that process. So certainly starting on the inspection side, we have a fair amount of experience, and I'll ask Debra to speak to some of that. We're also looking at dealing with that on the approval side as well, as we look to apply whatever limited resources we have to the best effect possible. Debra, maybe you want to introduce yourself.

**Ms. Debra Sikora:** I'm Debra Sikora. I'm a director with the Ministry of the Environment. I'm actually here representing Michael Williams, who is the assistant deputy minister of the operations division. I'm glad to be here before the committee.

I can talk to you a little bit about how we have implemented a number of risk-based approaches to our compliance efforts within the ministry and, as the deputy noted, we would start with our SWAT team.

Our SWAT team is comprised of two units within the environmental SWAT team. One of them is the sector inspection and enforcement unit. They are noted for a business model that conducts particularly high-risk, sector-focused inspections with an emphasis on flagrant or repeat violators. I can just give you an example of some of the sectors that we have inspected: the electroplating and metal finishing, auto body and auto repair shops and, most recently, of course, some of the petrochemical industries in Sarnia. Building on that risk-based approach with the SWAT team, we have actually introduced into our district inspection regime the same risk-based approach. That was introduced in the 2004-05 fiscal year, and we will continue to build on that as we analyze the outcomes of those inspections.

As well, the deputy commented in her remarks that we are also moving toward a risk-based approach for the issuance of certificates of approval, and we have done a number of updates to that process to move us along that path.

**Mr. Wilkinson:** Thanks, Debra.

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**The Vice-Chair (Mrs. Julia Munro):** We'll move to Mr. Sterling.

**Mr. Norman W. Sterling (Lanark-Carleton):** I have two questions which are somewhat supplementary to Mr. Wilkinson's. Number one is, have you agreed to any number in terms of reduction of carbon emissions regarding Kyoto?

**Ms. West:** Sorry, with respect to Kyoto?

**Mr. Sterling:** Yes.

**Ms. Andrew:** The short answer would be, no, we haven't.

**Mr. Sterling:** That's good, very good, and I hope you never do. I think that it's important to know that the province of Ontario never agreed to a negative 6% overall carbon reduction in 1997 at Kyoto, nor did any other province. The federal government struck this number out of the air with no plan for implementation with regard to how they were going to reach negative 6%.

It's interesting to note that Australia went around the world and made arguments to various countries that they couldn't meet their 1990 levels in terms of greenhouse gas emissions. They came out of Kyoto with a plus 8%. When I asked Mr. Goodale, who was there representing Canada—I happened to be in Kyoto in 1997 on behalf of the Ontario government—how he struck negative 6%, he answered, "The United States said that they would reduce theirs by negative 7%, so we took negative 6%." That's the response that we had from the federal government at that time. So there was no science-based implementation plan by the federal government when they agreed to this level.

My belief is that the federal government should bear the financial and regulatory responsibility for providing this reduction. Now, we have to co-operate, and our Ministry of the Environment is probably the most skilled organ of government to assist in reaching that goal. We've heard in the House recently the Premier and the Minister of Finance saying that the federal government is collecting more taxes than it needs and that some of these monies should be transferred to the province of Ontario. I think the number is \$5 billion. I think that it's in Ontario's interest that you keep the heat on the federal government to assume the financial responsibility—and it's going to be great—to reach the targets in the Kyoto Protocol.

At any rate, I'm glad you haven't made a commitment on the number, because I'm not certain that you should ever make that commitment. I think we should try our very, very hardest to reduce our gas emissions, but on the other hand, I don't think that by agreeing to a number you're going to do anything but take the obligation that is now at the federal level and bring it down to the provincial level. Because if you agree to reduce X number of tonnes of carbon emissions, what you're going to do is then start to assume the financial responsibility and the regulatory responsibility to reach that goal.

What was the other matter you were talking about, Mr. Wilkinson? Oh, the airshed. Could you provide us with an estimate of the improvement of air quality that will occur in Ontario when we close all of our coal-fired generation plants?

**Ms. West:** Perhaps I can invite Tony Rockingham, who's our director of climate change and air quality, to speak to that.

**Dr. Tony Rockingham:** My name's Tony Rockingham. I'm the director of air policy and climate change. I guess I'd start with providing some context for your question. Coal-fired power stations are one of the largest

sources of a number of emissions in the province. They are major emitters of nitrogen oxides, which are known as a precursor to smog, so they're directly linked to the creation of smog. They are also one of the major sources of SO<sub>2</sub> emissions, which are implicated both for smog and also for acid rain. They are major sources of mercury emissions, and they are also major sources of CO<sub>2</sub>, which is a greenhouse gas.

In terms of your question—what is the implication for air quality associated with the closure of those stations?—there's no question that Ontario air quality will improve. Quantifying the impact is exceedingly difficult. We are carrying out studies that look at the implication, but as yet we have no definitive numerical answer to how will the air quality improve. There's no question it will improve, because, for example, nitrogen oxides account for some 15% of the total NO<sub>x</sub> emissions in the province, the SO<sub>2</sub> emissions are a larger percentage of total provincial emissions and, as I say, they are a major source of mercury.

**Mr. Sterling:** Mr. Wilkinson raised the fact of our airshed of 250 miles. As I understand it, in the Ohio Valley, within that airshed, there are 200 coal-fired generation plants. We have five in Ontario. As I understand it, most dispersion of our airshed is such that it generally moves west-east, and most of the benefit that will be reaped from closing our coal-fired generation plants will in fact be to New York state and the province of Quebec. I've heard estimates as low as under 1% improvement in our air quality on the closure of our coal-fired generation plants. Am I in the ballpark there? Are you talking 1% or 2%, or are you talking 20% or 30%?

**Dr. Rockingham:** Maybe I can provide some context again on the situation with air quality in Ontario. We look at air quality in terms of basically three areas. We note that there are local air-quality issues, and that would be where you can tie a particular facility to a particular air quality issue. So in a community where there is a large emitter of particulates, for example, you might find that outside the facility your car gets dust on it, and you can attribute that to that particular facility. We take action on those facilities.

As well, we look at regional air issues. That would be where the problem that a community faces is not necessarily associated with one or two facilities that are in that community, but the problem is because of a large number of emitters and the transportation of pollutants across larger distances. We take action on those. That's where one, instead of looking at a particular limit on a particular facility, might consider the whole set of facilities in the airshed, and you might impose regulations that affect all of those emitters. So we take action on that.

Then there's the larger set of issues associated with global air issues. That's where the benefits to the people of Ontario may not flow directly from actions on Ontario emitters, but they depend very much on global action. So you look at climate change; you look at ozone-depleting substances to see examples of those sorts of issues.

In answer to your question—are coal-fired power stations important for local air quality issues?—the

answer is, yes, there are pollutants emitted by coal-fired power stations that affect the immediate community. So power stations are encouraged to put on particulate traps and mechanisms to reduce particulates. It's why we have regulations that govern the opacity of the plume that comes out of a power station, whether it's coal-fired or any other fossil-fuel station. That's why we have developed regulations that cap the total emissions from the electricity sector, whether it's from coal-fired power stations, natural-gas-fired power stations or wood-burning stations, because we recognize that for some pollutants, such as NO<sub>x</sub> and SO<sub>2</sub>, it's not a particular power station but a group of power stations.

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In answer to your question—how important are coal-fired power stations to air quality?—they are very important to air quality. On a local basis, closing the coal-fired power stations can improve local air quality. On a regional basis, as we work in conjunction with the United States to reduce the total emissions from coal-fired power stations, they will have an impact on regional air quality. Of course, on a global basis, coal-fired power stations are an important source of CO<sub>2</sub>. As facilities reduce those CO<sub>2</sub> emissions or if there's fuel switching so that CO<sub>2</sub> emissions are minimized, that will have important implications.

**Mr. Sterling:** We talked—and Mr. Wilkinson talked—about risk-based allocation of resources in the ministry. I would really like to see Ontario make some of our energy decisions and our environmental decisions on a risk base as well. I really hope for that. I request this from you: that you provide the committee with an estimate of the improvement of air quality on the closing of our coal-fired generation plants. You may do that in a single number or you may do that in terms of how it assists the greater Toronto area or whatever.

We are going through a very critical period with regard to the investment in our energy sector, and I think we should know what we're going to reap in benefit as a result of closure of those plants.

**Ms. West:** We can provide further information for the committee.

**The Vice-Chair:** Thank you very much. We'll move on to Ms. Churley.

**Ms. Marilyn Churley (Toronto-Danforth):** Thank you very much. I'll try not to lose my voice throughout this.

First of all, I have a different take on the whole Kyoto situation than Mr. Sterling, but of course you're not the politicians. You're here to answer questions about just what your overall direction is within the ministry, so I'll stick to that instead of giving you my political opinions today.

On that basis, I have a couple of questions. I believe Ontario actually has a climate change office. Are you from that office?

**Ms. West:** Tony is the director of climate change and air policy for the ministry. So from a policy standpoint, yes.

**Ms. Churley:** Right. Ontario is actually one of the places that is ahead. It's one of the few jurisdictions that does require mandatory reporting of greenhouse gas emissions. Is that correct?

**Dr. Rockingham:** That's correct. Ontario has a regulation in place, and that regulation has been in place for several years. Starting this year, however, there is a requirement for reporting of GHG emissions across Canada, and that is the result of federal action under their program, known as the National Pollutant Release Inventory. But you're correct: Ontario has had that regulation in place and has been in advance of other provinces.

**Ms. Churley:** But Ontario doesn't have any regulations at this time to place a cap on greenhouse gas emissions.

**Dr. Rockingham:** No, it doesn't.

**Ms. Churley:** Is that something that is under consideration? It is an issue I brought up yesterday. I presume the answer would be that we're waiting for the feds, which I believe Mr. Sterling would agree with, to come down with changes to the Canadian Environmental Protection Act. I'm not so sure that's forthcoming. So my question would be, is that something that's under consideration, actually bringing in regulations to cap greenhouse gas emissions?

**Ms. West:** Maybe I could invite Joan Andrew to respond to that. I assume the question is with respect to Ontario's intent.

**Ms. Churley:** Yes.

**Ms. West:** As you know, it's difficult for us to speak to intent per se, but perhaps Joan can speak to the relationship with the federal representatives with respect to greenhouse gases.

**Ms. Churley:** Before you answer, if you could hold your thought, my next question is actually related to that, because it's around your negotiations and discussions with the federal government. Of course, the province doesn't have any specific obligations under the Kyoto Protocol at this time. As I understand it, you have been negotiating with the government on a plan, and it's more about how to make a plan, but there's no blueprint for specifics or targets in general that we will meet through those means. My question is also around that, besides the caps.

This plan's lifetime is up 2009, right? But Canada is supposed to meet its first set of targets under Kyoto in 2008. My question is related to the other question around the caps. Since there is no plan yet—and there is a possibility that we could be in the planning stage up until 2009—my question is general around how that's all going to unfold, given that there are no caps, there are no commitments at this point in Ontario. Do you get my drift here?

**Dr. Rockingham:** Sure. Maybe I can provide some context again. As Mr. Sterling indicated, Ontario was at Kyoto as part of the Canadian delegation on climate change, and has been part of the Canadian delegation at a number of the international conferences where the imple-

mentation details of Kyoto have been discussed. So we have been working with the federal government on a wide range of aspects associated with climate change.

There was indeed a national process, and Ontario was very active in that, to try to establish what would be the best plan for meeting Kyoto obligations. As a result of that national process, a number of documents were produced and a number of ideas were put forward. The federal government did, in 2002, bring those ideas together. There was some controversy about whether they had considered all the provinces' input, but a plan was produced and tabled in Ottawa that was Canada's plan for meeting its Kyoto obligations.

We are still in discussions with the federal government because some of the details of that plan have yet to be explained adequately for emitters to actually know what their obligations are. So Ontario continues in discussions, as do all provinces, on the best mechanism for implementing Canada's obligations under the Kyoto Protocol.

I think the answer to your question is: There is a national plan that was published in 2002, there are many details of that plan yet to be ironed out and those discussions continue.

**Ms. Churley:** OK. Basically, you've confirmed what I thought is where we're at in Ontario in terms of the plan.

Just one other question on Kyoto. Instead of waiting for the federal government to move on some of the other things—because once again we heard yesterday there is still no plan—Manitoba, for instance, and some municipalities, like the city of Toronto, have taken actions on their own in terms of trying to make progress with some other things—I mentioned setting the caps—like a large retrofit program for public buildings and all those kinds of things.

Are there plans afoot within your office, working with the Ministry of Energy, to really improve and increase those kinds of programs, beyond the capping—retrofitting of buildings, conservation and efficiency—beyond the program that the Minister of Energy has announced, to build on that?

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**Dr. Rockingham:** Indeed, Ontario is taking action to reduce GHG emissions. We have several initiatives that have been underway for a number of years. As you indicated earlier, Ontario was one of the leaders in requiring facilities to report greenhouse gas emissions, and certainly some of the thinking behind that was that if you're not measuring it, you can't manage it. So one of the first steps is to require people to measure their emissions so that facility owners and managers understand what their emissions are and then can take actions to reduce those emissions.

The government has committed to closing the coal-fired power stations. By moving to cleaner energy sources, there will be major greenhouse gas emission reductions associated with that. As an example, the Ministry of Energy has released a request for proposals for 300 megawatts of renewable energy—

**Ms. Churley:** I'm sorry to interrupt you. I'm very familiar with that and I don't mean to be rude, but we

don't have a whole lot of time. Perhaps I wasn't clear enough in my question. Beyond what the Minister of Energy has announced in these areas, are there other things and plans being made about building on those, bringing in a province-wide retrofit energy efficiency plan beyond what the minister announced, that you're aware of?

**Dr. Rockingham:** Certainly one of the programs that goes beyond what was announced by the Minister of Energy would be the ethanol initiative of the Ontario government, where the government has committed to ensuring that at least 5% of the gasoline mixture sold in Ontario is composed of ethanol. Ethanol has major benefits in reducing greenhouse gas emissions, because it's replacing fossil fuels with fuels that are made from biological sources. As those sources grow, they capture carbon dioxide from the atmosphere.

Ontario has also signed an MOU with the steel sector, as one of the parties, the Steel Association of Canada and the federal government, to encourage the steel sector to find the mechanisms it can use to reduce its greenhouse gas emissions.

Another initiative that goes beyond what the Minister of Energy has announced would be Ontario's five-point plan, which acts on some 30 large emitting sources. It primarily drives them to reductions in smog-causing emissions, but, as part of the targets for that, we are expecting energy conservation efforts to be accelerated, and those will have major benefits for greenhouse gas emissions.

**Ms. Churley:** Thank you. Those are ones that I'm also aware of. Again, I guess it's more of a political question, so I'll move on. Given what we know about the drastic situation we're in around greenhouse gas emissions, Ontario has got to put in a lot more aggressive programs, because we're the second-largest emitters of greenhouse gases. Those are the kinds of things I'll be raising, obviously, more on a political level.

**The Chair:** Ms. Churley, as you're moving to another area—I know you're not a regular member of the committee—we try to rotate from time to time on points so that—

**Ms. Churley:** That's fine. I was going to move on to another area, but if people want to jump in here—

**The Chair:** OK, sure. Ms. Broten.

**Ms. Laurel C. Broten (Etobicoke-Lakeshore):** I wanted to ask a few questions with respect to the auditor's concerns about certificates of approval. Certainly that's an issue that raises red flags as to whether or not approval levels have been established, whether they are being complied with and whether, as time passes, the certificate-of-approval system has been keeping up with modern knowledge about what level of pollutants is safe or not safe and the types of pollutants. I'm wondering if someone can comment with respect to how the ministry is going to respond to the auditor's quite severe criticism of the lack of enforcement and probably the lack of modernization of the certificate-of-approval system.

**Ms. West:** In my opening remarks, I referred to a few of the initiatives the ministry has undertaken. It really is

an important area of concern and it's a challenge for us but I'll ask Debra Sikora to speak to that.

**Ms. Sikora:** I'd be pleased to give you an update on what the ministry has done with respect to certificates of approval and will certainly call on our colleague Jim O'Mara if we need more details.

The auditor did raise a number of concerns, both in the audit report a couple of years ago and this most recent one, and I'd like to tell you a bit about what we have done to address a number of those concerns.

We have implemented a number of processes over the last years to assist us with the updating of the certificates of approval. Most recently, we have introduced protocols. These have recently been posted on the environmental registry. In effect, these protocols will allow the ministry to ensure that the updated certificates of approval will incorporate all the current environmental standards and procedures and updated ministry standards as they come about. As I said, they were recently posted on the environmental registry, and that will ensure that our regulated community is aware of our practices.

In addition to that, we have developed what we call model terms and conditions to be included in all of our certificates of approval. This will help ensure that the consistency of each of those areas of standards is represented in our certificates of approval. The wording will then be more standardized, more defensible and more enforceable as well.

The auditor also recommended that we implement a checklist, and indeed we have done so. It is in use today in the ministry. This checklist assists in checking against the use of the protocols and the model terms and conditions, so again we ensure consistency with all of the certificates of approval.

In addition to all of those pieces, we worked very closely with our district offices and we have implemented what we are calling a bit of a field alert program. As the field is conducting inspections at the facilities, they will alert our environmental assessment and approvals branch whether or not there need to be updates to the certificates of approval and whether new certificates of approval need to be put in place. That field alert program is in place as we speak.

I noted earlier in my remarks that we are moving beyond that. We are looking at a risk-based approach to certificate-of-approval issuance and updates, and there will have to be systems enhancements to ensure that that takes place.

**Ms. Broten:** So practically, for example, say a certificate of approval was issued well in the past, can you just give us an explanation of how the process will unfold so we are assured that we are not in the same circumstance five years from now? I understand there are many certificates of approval that have been issued that are long-standing. How do you go back and determine the connectivity between new information we have about hazardous pollution levels and a certificate of approval that was issued 15 years ago, ensuring there's a connect-

edness between that and how we're going to follow that process through?

**Ms. Sikora:** Jim, I wonder if I could call on you to address some of the details of the question.

**Mr. James O'Mara:** Good morning. My name is Jim O'Mara. I'm the director of environmental assessment and approvals. Thank you very much for your question.

As certificates of approval come up for renewal or amendment, we do check them through, using our protocols and checklist that was suggested by the Provincial Auditor. By using both the protocols and the checklist and other devices—standard operating procedures—we make sure that those certificates, as they're updated, reflect the most modern guidelines, standards and requirements under legislation.

**Ms. Broten:** What's the cycle of updating or renewal on certificates of approval?

**Mr. O'Mara:** They are updated as they come in for amendment and application. We are doing, in total, both new and updates, about 8,000 per year.

**Ms. Broten:** So the area of concern, I guess, continues to be a company operating under our radar screen with a long-standing certificate of approval that would not meet today's criteria for pollutant levels. Is that a risk factor?

**Mr. O'Mara:** The risk we're trying to address through the risk management plan or, as I prefer to call it, performance management plan, is to look at those areas we have identified as representing significant environmental risk and to target our activities on those sectors. So as we develop that risk management or performance management plan, we will be focusing on those sectors and those companies that represent the greatest risks.

**Ms. Broten:** What type of sectors would those be?

**Mr. O'Mara:** Clearly the large emitting sectors, such as the metals sector and some of the chemical sectors, are key to our considerations, as well as things like the pulp and paper industry, which is a large emitter as well.

**Ms. West:** If you want a list, for example, of the greatest areas of risk in the sectors, perhaps, Deb, you can speak to that.

Just as Deb's coming up to the table, I think we want to remind you that in the field there's an opportunity by way of the district offices to identify some of those problem areas that ordinarily, if you will, would fly under the radar screen, as you say. Then they can, as they see them in the field, bring them forward with an alert so they can be addressed from a certificate of approval standpoint.

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**Ms. Broten:** Just on that note, if an alert was brought forward, what action would be taken?

**Ms. Sikora:** I can address a couple of your concerns and maybe just establish the linkage between how these are brought to our attention. Between the field alert program, as we're calling it, which is any time we go out and respond to an incident report—these alerts may come to our attention through our planned district inspections. They may also come to our attention through our STAC program, which is the selected targets for air compliance

program. That is where we have incorporated and looked at the highest areas of risk for any of these facilities. Those three programs would be the triggers or the alerts where we would look at the certificates of approval.

The kind of compliance or abatement action that we would take would certainly depend on what kind of exceedences we were finding to those certificates of approval limits. If we're looking at health-based exceedences through the STAC program, we would be looking at notifying the medical officer of health of those, through our district inspection realm. We would take the appropriate abatement action, whether that was issuing a provincial officer's order—depending on the facility's compliance history, we would certainly take the most effective compliance, up to and including enforcement of those exceedences, if that was the case.

**The Chair:** Are there any grandfathered industries left that are operating without Cs of A? In other words, when the C of A regime came into effect, I believe in the early 1970s, there were some industries that were grandfathered. If you were in operation before that, you didn't need a C of A.

**Ms. Sikora:** Sorry, I'm going to have to defer to my colleague on this answer.

**Ms. West:** Maybe Joan could speak, in terms of requirements under the statutes for certificates of approval.

**Ms. Andrew:** We will have to get back to you, but I am pretty sure that there are some parts of the agricultural industry that do not require Cs of A.

**The Chair:** I understood that some smelters are old, old—

**Ms. Andrew:** They predate the C of A program?

**The Chair:** Yes.

**Ms. Andrew:** We'll have to get back to you on those.

**Ms. Sikora:** We can certainly get back to you with that information.

**The Chair:** Mrs. Munro.

**Mrs. Julia Munro (York North):** I do apologize for not being here earlier. I hope that I'm not asking questions you've already answered. The Chair just referred to the issue of grandfathering, and actually I want to ask a question with regard to grandfathering that comes out of the question of the certificates of approval.

When you talked about the sectors that you have identified, the ones that you identified for us just now were obviously major industrial players. My question is more related to small businesses that would require a certificate of approval and those that might have been provided some years ago, that now, as Ms. Broten asked about, there are changes in technology and upgrading and things like that. What would trigger the individual who holds that to be compliant? Are they going to know? Are they going to have to be inspected? What kind of relationship is there for those people?

**Ms. Sikora:** I think I'd like to refer to some of these sectors that we have targeted through our environmental SWAT team. Certainly the SWAT program looks at the risk-based sectors, and that does include some of the smaller industries as well as some of the larger industries.

I commented earlier about some of the examples of SWAT sector inspections that we have conducted in the past: the electroplating and metal finishing areas, auto body and auto repair shops, auto wrecking and recycling—that kind of area. Traditionally, these are not very large industrial emitters. Through that identification of risk-based inspections, we would certainly target those areas where there is potentially risk to human health or the environment. So it would be through an inspection process, and that would be one of the triggers.

In addition, another trigger would possibly be a pollution incident that is reported either through our district offices to SWAT or to our spills action centre. That may also be a trigger for us to look into whatever abatement action we would have to take. Those are a couple of the triggers for the smaller industries.

**Ms. West:** Just in response to that as well, I think SWAT, as a very good example, has modelled a few very good approaches to focus on the goal of compliance, so it's not just through inspections and through orders or charges that we act. We recognize that there's another part of the spectrum, that we need to provide assistance and education. I think in some of the areas that Debra noted, some of the small businesses were not aware of the fact that they were out of compliance, weren't aware of what they were required to do to come into compliance. Working with any associations in that industry, helping to sponsor seminars or sessions, helping to inform them and educate them on the requirements: I think that's another very important role of the ministry, not just the enforcement side.

**Mrs. Munro:** Actually, that's where my question was going, on the issue of the education.

Can you just give us, not necessarily a statistic but a flavour or a sense of to what extent issues around the necessary changes in investment in terms of the new technologies and things like that—to what extent would investment play a role in an individual's difficulty or challenge to come into compliance?

**Ms. Sikora:** Are you referring to economic investment?

**Mrs. Munro:** Yes. If you go in there—I'm assuming people who have been out of the loop, so to speak, in terms of the kinds of requirements that a new application would require—I assuming that's going to involve some kind of significant investment on the part of the organization that now is out of date. To what extent is that an issue in terms of getting compliance?

**Ms. West:** Maybe I could just speak initially, and then Debra or Joan may want to add to that. Certainly, if we look at the main objective of compliance, we recognize that in order to come into compliance, industry and small business in particular have certain factors that they have to consider to permit them to do that. Basic economics obviously is one of those considerations. As we work with, for example, the small businesses or some of the small industry that Debra mentioned, we certainly take into account that they do have some financial impediments. But also, as part of the education side, we would

help to perhaps inform them of technology that is available that they may not have been aware of, technology that, if they did invest in it, doesn't only assist them in terms of coming into compliance but could assist them in terms of their other operational benefits, whether it's energy efficiency or whatever.

Certainly, some of the policy that we look at on a broader scale in terms of regulation within the province—of course economic factors come into it as well. We do attempt to recognize that there's a balance that needs to be reached with respect to good regulatory environmental policy within the context of the current economy and current and evolving technology. It is something that the ministry certainly is aware of and that we take into account in policy development, in compliance activities—that sort of thing.

Do you want any more information on that?

**Mrs. Munro:** No. I think understanding that balance is obviously important, and you don't want to see it used as an excuse. At the same time, you do want to see compliance.

I'm sorry I can't remember which of you, but one of you mentioned the role of the district medical officer of health. That prompted me to think, "What power is there in that office that would send you there to report on an issue?"

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**Ms. West:** With respect to the air emissions concern, obviously the medical officers of health, and certainly the city of Toronto public health—that's a good example of their involvement and interest in terms of good air quality and the impact on human health. It's obviously our concern as well.

With respect to enforcement and compliance, I'm not sure who's best able to answer that specific question. I'm thinking of the air side, rather than water spills, for example. I'm not quite sure when the medical officer of health is actually alerted and involved. Certainly, at a district level, our district officers do work with their public health units on human health concerns.

Joan or Carl, do you have any—

**Ms. Andrew:** We do work with local health units on air issues. It varies a little bit across the province, depending on the capacity of the local health unit, but under the Health Protection and Promotion Act, they do have the authority to deal with issues as they may impact human health. So if there was a particularly substantive emission to air, like there are sometimes to water, they can order the closure of the plant. They can do a variety of things if they believe—they have quite significant powers to deal with human health issues.

**Mrs. Munro:** That was really my question. My further question on this round: Reference was made a few moments ago to the introduction of ethanol in fuels. I wonder whether or not, in establishing the 5% minimum, there is also a requirement to make it Ontario corn.

**Dr. Rockingham:** I can speak to the announcement that was made by the government and the actions that are underway to flesh out the details of exactly how the

ethanol content is going to be enforced. The objective or the commitment is to ensure that, averaged across the gasoline sold in Ontario, 5% of that gasoline is ethanol, the total content.

What we're looking at right now are the mechanisms to both encourage ethanol production in Ontario and ensure that that requirement is met. So the Ministry of the Environment is looking at options around a regulation that would require both recording of the ethanol content sold at various points within the province and the amount of gasoline sold and disaggregated in a manner that we can ensure that obligations for suppliers are met.

The question of where the ethanol comes from is a detail that's going to have to be worked out, but there have been no decisions on that, as far as I know, at this point.

**Mrs. Munro:** Thank you.

**The Chair:** Can you provide me with the energy inputs and outputs of ethanol? Do you have a paper on that, which you could forward to me, please? In other words, what is the bang you get out of a 5%—as I understand it, it produces about 10% of the energy a normal octane gasoline does, but I'd like to know what the energy inputs are to produce the ethanol as well.

**Dr. Rockingham:** I can speak broadly to the greenhouse gas benefits, or is it the energy benefits in particular?

**The Chair:** Energy benefits. Well, I'd like to know both, actually. If you could just provide that on paper to me, that would be—

**Dr. Rockingham:** OK. We'd have to get back to you with further information on the energy content.

**The Chair:** Ms. Churley.

**Ms. Churley:** I wanted to go to the five-point plan. Actually, my first question around that relates back to a question we referred to earlier under the Cs of A, and that is the chemical industry, which you mentioned is, as we all know, a very major source of pollution, but it's not subject to the new pollution limits when it comes to NO<sub>x</sub> and SO<sub>x</sub>. They've been exempted. I just want to know why. I mean, I recognize that there are economic issues, I suppose, but in my view, that's one of the big flaws with the five-point plan, that they're exempted. Can you tell me why and when they're going to be brought in.

**Dr. Rockingham:** Yes, thank you for the question. I'd be happy to give you some context and the answer to that. What Ontario is doing in terms of NO<sub>x</sub> and SO<sub>2</sub> controls is that we're looking at programs across all sectors of the economy. We're using particular instruments where it makes sense, given the situation for the sector facilities.

For example, Ontario did move several years ago to cap the of NO<sub>x</sub> and SO<sub>2</sub> emissions from the electricity sector, recognizing that that sector is typically a very large emitter—a coal-fired power station—where you might have tens of thousands of tonnes of NO<sub>x</sub> emitted by a single facility. So acting on that makes sense, in that one can take advantage of economies of scale. As well, the sector as a whole is a major emitter, even though

there are smaller facilities that have fewer emissions per year.

The way that regulation worked was that it capped the six largest emitters—the five coal-fired power stations and the large oil-fired power station—first. That cap came into effect in 2002. In 2004, the rest of the sector was capped, so that now any electricity producing facility that sells more than 20,000 megawatt hours into the electricity grid and emits at a rate greater than defined in the regulation faces obligations.

The next step in terms of using emission caps for annual emissions was to look at what are the next largest facilities in terms of emissions. The work that the Ministry of the Environment has done is to look at the facilities right across Ontario, in terms of their emissions, and prioritize. The initial cut to allow us to do a much more detailed study was to look at those facilities that had emissions of more than 1,000 tonnes of NO<sub>x</sub> per year and more than 1,000 tonnes of SO<sub>2</sub> per year. On that basis, the ministry published a paper in 2002 that basically signalled that if that's the threshold that's used, then these are the sectors that are, indeed, called large emitting sectors. Initially we looked at the chemical sector and, upon reviewing the data, there's only one facility that exceeds those criteria, and that's the NOVA facility in Sarnia. It turns out that that facility's emissions are large, in part because they do something very close to refinery-type work, so that facility—

**Ms. Churley:** Where did that threshold of 1,000 tonnes come from?

**Dr. Rockingham:** That's a judgment made after looking at the distribution of emissions across all of the facilities. A very large proportion of the total NO<sub>x</sub> emissions from the industrial sector can be controlled if you act on those facilities that have emissions of more than 1,000 tonnes. What we have done is, we have made some judgment calls. So, for example, the only facility in the chemical sector that is under an SIC code that would indicate they're chemical is the NOVA facility. That is proposed for regulations in the draft regulation that was posted earlier this month.

In the pulp and paper sector, there are several facilities that are over 1,000 tonnes a year. We looked at the makeup of that sector and made a judgment call about even those facilities that are emitting perhaps just less than 1,000 tonnes but are in the same competitive market as those facilities above 1,000 tonnes. We have named nine facilities in the pulp and paper sector where we are proposing to cap their NO<sub>x</sub> and SO<sub>2</sub> emissions.

**Ms. Churley:** Given the time, just a couple of other questions on the five-point plan. I think that I'm going to stick to one that has been raised by Mr. Sterling earlier. As I understand it—well, I know; this is into the whole emission credit plan—right now the US coal-fired plants can buy credits from Ontario so that they can actually continue to pollute more in the regional airshed that we all use. Do you think that's a problem?

Under the proposed plan, the OPG, as I understand it, can earn credits even if the coal plants—there are two

issues here around emissions credit trading: the one that I just mentioned and that OPG can earn credits if the coal plants close. In turn, they can sell those to the US coal plants operating in the neighbouring states. So any net benefits—I think this is partly what you were referring to, although we have a different view about the coal plants, because I believe that to have any credibility in pushing the US, over time, to close down and not expand coal plants, we have to deal with ours. But any net benefits of closing down a coal plant here will be lost, beyond what Mr. Sterling was talking about, if the plants south of the border can buy permission to pollute even more. Would you admit that that is the problem and that we need to revisit our approach to emissions trading?

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**Dr. Rockingham:** Maybe I can answer a number of parts of your question. Let me establish, first, that while power stations operating in the US are welcome to buy credits or allowances from Ontario, they would not have any value to them, because the US regulations do not recognize allowances issued in Ontario or credits issued under regulation 397.

The other part of your question: Can OPG facilities earn credits by switching fuels or taking actions to reduce their emissions? The answer is no. The OPG facilities do face obligations whereby they have to report their emissions, and at the end of the year, match tonne for tonne so that they surrender to the Ministry of the Environment one tonne of emission allowances or credits for every tonne of emissions. We have been alerted through the EBR comments on the proposed regulation that there is concern about, when you close the coal-fired power stations, will other capped facilities be able to buy those allowances and therefore avoid any reductions at their own sites?

First of all, let me establish that the existing regulation reduces the caps; that is, the number of allowances the government hands out each year. Those allowances are reduced over time, and there are substantial reductions by 2007. The government has recognized that it needs to gain experience with emissions trading and will be reviewing that regulation, and as other programs are developed, changes to that regulation would be made. So the government will be making a decision about how the emissions trading regulation and the caps associated with different sectors would change as other decisions are made that would affect the facilities that are capped.

**Ms. Churley:** I know we have to move on. Can I have one quick follow-up question on this?

**The Chair:** Sure.

**Ms. Churley:** I just want to be clear, and I'm glad you're reviewing that, because I think we would all agree that creates a problem. As I understand it right now, the capped and uncapped industries, say, like the chemical industry, can buy credits from neighbouring US states and that will allow them to exceed regulated limits. That's the way it is right now, correct?

**Dr. Rockingham:** No.

**Ms. Churley:** Could you clarify that?

**Dr. Rockingham:** If I could provide the context for that, the emissions regulations that exist for the electricity sector impose new obligations on capped facilities. They do not relieve those facilities of any other obligations. So whether it's a coal-fired power station that's currently capped or the proposal to cap facilities in the pulp and paper sector, that regulation does not relax any other regulations or obligations that facility requires. If, under a control order or a certificate of approval, it must take certain actions or must reduce emissions or meet certain standards, then those standards will be unaffected by the emissions trading regulation.

If your concern is that the government has established a sector limit, or through the regulation has handed out a specific number of allowances to that facility, and can that facility buy allowances or credits from other emitters, the answer is yes. In terms of credits, they are only issued when there are proven reductions by that emitter so that the environment is held harmless. In fact, the environment benefits, because when someone approaches the Ministry of the Environment to say, "You have to find a standard method"—so you have accepted this particular technology, whether it be low-NO<sub>x</sub> burners or switching fuels to lower sulphur fuels. By accepting a standard method, the ministry has signalled that it believes that technology or that method is a bona fide way of reducing emissions. The ministry then requires that the baseline emissions be established for that facility or process, and that once the technology being proposed has been installed, there is monitoring that takes place to prove the emissions have been reduced.

After a period of public comment on the methods and the reports that have been submitted, the director is then in a position to award a credit to that facility. It has made proven reductions. In fact, the regulation requires that it provide a gift to the environment, that if it reduces by 100 units, 10% of those units are ignored, and it's awarded a credit for only 90 units. So the environment benefits by that creation of credits. Then if that credit is sold to a capped emitter, yes, that credit can be used by the capped emitter, but it has been purchased, so it's still providing a real incentive for that emitter to take action to reduce its emissions. The environment is protected because the total NO<sub>x</sub> emissions in the airshed have not risen, and in fact have gone down.

Again, I just reiterate that the proposal that was posted on February 10 is that the emissions limits for each of the sectors will decrease over time so that there is a continuing signal that you have to take actions to reduce your emissions. Because there will be some facilities that are able to reduce their emissions far below the number of allowances that are handed out, I think it's very clear that the price for emissions allowances over time is going to increase. I believe it's an excellent economic instrument to ensure the accountants understand that the emissions from this facility are costing the company money. It's my view that once you get the accountants involved, you will look more closely at cost savings through pollution reduction.

**The Chair:** Mrs. Sandals.

**Mrs. Liz Sandals (Guelph-Wellington):** I'd like to have a look at page 125 of the auditor's report. It's going back to the issue around air quality monitoring. In the second paragraph, more or less, on the page, it talks about five cities that had 19 days of poor air quality. It just happens that the list is Hamilton, Mississauga, Guelph, Sarnia and Windsor. Four of those you might intuitively expect to be on the list for one reason or another, but Guelph, which happens to be my riding, is not someplace that you would have traditionally expected to be a hotspot of bad air in Ontario. In fact, my observation, as somebody who has lived there for a very long time, is that traditionally we thought we had pretty good air quality. My observation would be that when we have a bad air day, and we certainly noticeably do now, it's almost invariably attached to a southerly wind instead of the prevailing northwesterly, and that the occurrence of smog days has gone up dramatically since Ontario started to rely more heavily on coal-burning plants; that is, it would seem we're downwind when we have a south wind from the coal burners on Lake Erie. I'm wondering if those observations are true and if the extension of that would be that getting rid of the coal-fired plants, on Lake Erie at least, would have an impact on the number of smog days in Guelph.

**Ms. West:** We'll ask Tony to start to address your question, but if we start to get into the monitoring aspect itself, we'll ask another director to step up.

**Dr. Rockingham:** I think your question is, is it true that bad air quality days are associated with particular atmospheric conditions and typically transported pollution from the southwest? I think the answer to that is yes. We can provide more detail, if you wish, but air quality is very much associated with particular atmospheric conditions. This is the issue I talked about earlier, where we recognize local air quality issues, regional air quality issues and global air quality issues. Regional air issues arise because the conditions are caused by a number of polluters, a number of emission sources that are spread out over a large geographic area. In the case of air quality in southern Ontario, there's no question that sources in the US are very important to the air quality conditions that exist in Ontario.

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**Mrs. Sandals:** Would it also be true, though, that the number of smog days, if I can put it that way, in my particular neck of the woods seem to have increased along with the increase in the use of those coal-burning plants, one of which is an Ontario coal-burning plant to the south of us?

**Dr. Rockingham:** The increased use of coal-fired generation has certainly contributed to poorer air quality. It's very difficult to establish exactly which facility is causing air quality issues that are regional in nature. It is true that, as Ontario has increased its coal-fired generation over the last few years because of circumstances in Ontario associated with demand growth and poor nuclear performance, there has been an increase in coal-fired

generation in the United States. Both of those factors could well be part of the cause for the air quality incidents in Ontario.

**Mrs. Sandals:** The other thing—and this may be for the other manager—is that it seems counter-intuitive that Guelph would appear on this list and not, for example, Toronto, which probably gets us into what's being measured. As somebody who spends a lot of time in both places, what you feel when walking on the street would be that it intuitively seems that the air quality during rush hour is significantly worse than the air quality I would ever experience while walking around the neighbourhood in Guelph. So I guess the question, then, which the auditor has raised, is the whole methodology around measuring the AQI. You make reference to working with the federal government to come up with some new methodologies, and I'm wondering if you could tell us a little bit more about that and what you would expect to see if you're looking at the cumulative effects of various pollutants in terms of different patterns, in terms of where the hotspots are.

**Ms. West:** Why don't we ask Ed Piché to come and speak to the issue of the air quality index, both with respect to that specific question and with respect to any current discussions with the federal government.

**Mr. Edward Piché:** Thank you, Deputy. Good morning. My name is Edward Piché. I'm director of the environmental monitoring and reporting branch. One of our many networks is the very comprehensive and, I'm proud to say, state-of-the-art monitoring program in Ontario.

Intuition is always a fascinating dimension of the human condition, because sometimes it's very insightful and sometimes it's misleading. If I may set the ground rules for a second here, I just happen to have in front of me historical data covering a full calendar year for Ontario, and I'll just go back a couple of years. For 2004, there were eight advisories covering 20 days; for 2003, seven advisories covering 19 days; for 2002, 10 advisories covering 27 days; and so on. So the actual fact in the last several years is that there hasn't been a significant change. The auditor's observations do have merit, of course, and the causality or the reasons why are, quite frankly, very complex. We study them, as do a large number of academics and other folks, to try to determine why that is.

All sources are significant. Power plants are significant. But let's not diminish the importance of vehicular traffic and the incredible growth that Ontario has seen over the past decade or more. Reflecting also on trans-boundary airflow—about which your observation is correct; you notice these things at certain times of the year under certain conditions—that is correct, and the scientific evidence supports that. As Dr. Rockingham said earlier, you get these weather phenomena with a very strong southerly flow and, when that happens, we have significant and adverse air quality in Ontario. So we contribute and our neighbours contribute.

The observation is, yes, there has been a change. Your intuition that those areas seem to be obvious, except for

Guelph—Guelph is in the middle of very significant economic growth, and that's why.

**Mrs. Sandals:** That answers why Guelph is getting worse, but it doesn't answer whether we are exactly measuring the right thing if Toronto somehow appears to be less polluted, if I can put it—has fewer alerts than Guelph. That just doesn't seem to stand up to experience. I take it that the Toronto medical officer of health has made similar comments, so that's not just my lay intuition; there might actually be some professional thought that that's the case. What are we doing in terms of looking at the air quality index with the feds and the way we measure it? Where is that work at?

**Mr. Piché:** Ontario has a very long and exemplary history of being involved in air quality indices and actual measuring. It implemented, in the early years, the air pollution index, which measured ambient particulate matter and sulphur dioxide, and it had actionable activities that were related to that. Industry would cut back when the levels went above certain numbers.

We are working with the federal government, with federal health agencies, with provincial non-government organizations and with academic experts as part of this federal-led initiative to determine what is the best—I'll call it metric—measure to use when you're measuring air quality to alert us as to what actions we should do to best protect ourselves. As the media have indicated—and of course, if you look at the literature, it has also been hotly debated there: What's the best thing to do? Should we look at one substance? Should we look at just when it exceeds certain numbers or certain thresholds? Should we look at all the substances, or which subset of those substances? How do we evaluate the cumulative impact? Those are extraordinarily difficult questions.

I'm very pleased to say that Ontario has the most comprehensive network. We have a large number of leadership experts. We are participating in the federal process. There are some proposals that will be coming forth soon to look at where the index should evolve to. You may recall that in August 2003, Ontario was the leadership jurisdiction in Canada to implement measurement of particulate matter—it's called PM: Two and a half means 2.5 microns, and that's a very, very small measure of particulate. We were the first to put that in. It has changed. You'll see that some of these statistics will begin to change now because there are more advisories. We just had an unprecedented one in February. That was because of particulate matter.

Suffice it to say, there will likely be announcements in the not-too-distant future. They'll be continuous and ongoing as the federal process continues to make recommendations on how best to measure, what to measure and what that means. It's a very challenging initiative. We're in there with the best there is in Canada, and we'll be implementing recommendations as the government advises in due course.

**Mrs. Sandals:** I wanted to switch topics, but I'll come back to that later.

**The Chair:** OK. Julia?

**Mrs. Munro:** Just following up on the issue of air quality, I had a couple of questions. You referenced the work that you do as part of a federal initiative, and I just wondered if you could give the committee any sense of a timeline or a critical path in terms of what the federal government has laid out and when it wants to achieve particular objectives around this initiative.

**Mr. Piché:** As in all similar issues, the federal government has the challenge of dealing with all the jurisdictions in Canada. Is it fair to say that some are more advanced than others? But the intention is to bring some equity, if you will.

The current process is very close to producing a document that will give some advice to leadership jurisdictions; we are anticipating that some time in late spring or early summer. The intention of that community is to produce a document, and of course we're monitoring and participating very closely in that. In terms of the time frame, I would say very shortly. The intention some time ago was to move a little bit more expeditiously, but some of the key individuals, unfortunately, suffered significant setbacks and that's held the process up. Also, there has been very strong polarization within the provincial community as to what is the best next step and why. It's very, very strongly debated.

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The analogy I would use—for those of us who are more than 25 years old—is smoking. I can remember medical authorities 25 and 30 years ago saying that smoking didn't have any impact on your health. Of course, time has proven them not to be correct. Similarly, in this instance, air quality does have an impact. The question is, what's the best thing to do about it and how to go about doing that. What are the best parameters to measure—when, where—and what to do about those measurements when you have them?

Again, I'm very pleased to say that Ontario is a leader in Canada. Our scientists are key players in this process.

**Mrs. Munro:** That leads me to my next question, because on page 124 of the auditor's report, it refers to the fact that Toronto's medical officer of health "has estimated that 92% of the hospitalizations and premature deaths that are attributable to air pollution occur when the air quality rating is good or very good." That sort of jumps out at people, I think. Talking about one's intuitive sense, that obviously comes as a surprise. The second reaction is, have we got a really good definition of what is good air quality or are we dealing with issues around the science of attributing these hospitalizations? I wondered if you would comment for us on that particular, which appears to be something of an anomaly.

**Mr. Piché:** First, I would say that we are the Ministry of the Environment, not the Ministry of Health, so obviously we are not experts in health. We do work very closely with health experts, and there is health expertise in these communities and on these committees that we're involved in.

We're obviously very concerned and interested in the state of the science, the state of the understanding of

health. The observations by the auditor obviously have merit. We study them and we keep abreast of the latest developments. As part of this federal-provincial process, we will be incorporating the best medical science into advisories and whatever metrics are used to alert the public.

So yes, we do work with the medical officer of health. That body of science keeps evolving, and as it evolves and as critical milestones are attained, that information will be incorporated into the process that we use to advise the people of Ontario how to best protect themselves.

**Mrs. Munro:** It seems odd, because when there are air quality advisories, there are public announcements that go with that about people with respiratory concerns and so forth. It just strikes you that it seems odd it would be at a point when those kinds of advisories would not be given if the air quality is good or very good. I appreciate that your expertise is only on the environment side and not on the health side, but I'm sure you can appreciate why it would strike someone like me as rather odd.

**Mr. Piché:** We have, since that publication, as I said earlier, incorporated particulate matter 2.5 into our index. We're the first jurisdiction in Canada and one of the first in North America to do that. And, as I indicated earlier, we are participating in the federally led process and subject to all the restrictions thereto to evolve us to what is the next step, what is the next best thing to do.

I would also counsel that whatever processes we take, however we advise people, we share a border with various provinces and states: Port Huron-Sarnia, Windsor-Detroit, Niagara-Buffalo, Ottawa-Gatineau and so on. Whatever advice we give to our community, for those citizens living in those cities, needs to have some harmony with adjacent jurisdictions. Those are some of the other challenges we have when we give this counsel, because if you're in Detroit and the US is telling its citizens one thing, we need to be able to respond responsibly and appropriately.

For those who know, Ontario, as a leadership jurisdiction, put in the smog watch and smog advisories several years ago. Those are done in concert with people in Michigan, with the federal government, with the US federal government and also with the provincial government of Quebec. So there is some common understanding among all the citizens who share what heretofore have been very friendly borders.

**Mrs. Munro:** With this initiative by the federal government and what I would understand to be Ontario's leadership role vis-à-vis the provincial side, the question that follows logically from your last comment is, do we have good information with what other jurisdictions do on the issue of connecting air quality and health? I'm thinking particularly of countries of the EU, where you'd have, in many ways, a similar geographic and industrial complexity to what we have in Ontario.

**Ms. West:** I'm trying to decide who's best able to respond to the question. We'll ask Tony Rockingham to come up and give you some observations.

**Dr. Rockingham:** I think the way I would address your question is to talk about what are known as Canada-wide standards, particularly for air quality. There have been Canada-wide standards developed for ozone and PM<sub>2.5</sub>, and those are standards that are set. For example, ozone would be set at 65 parts per billion; that's the short form. The longer, more detailed form is it's measured as the 98th percentile averaged over three years. It's a probabilistic form for a standard, recognizing, as I said earlier, that atmospheric conditions are very important to pollution concentration levels.

We look at similar sorts of standards that are set in the United States. As science progresses, those standards have tended to change over time. They have in fact become tighter, as science has demonstrated things like ozone, but more specifically the very small particulates, the PM<sub>2.5</sub>s that Ed referred to. In fact, there are finer particulates as well that we're aware of—PM<sub>1</sub> or PM<sub>0.5</sub>, half of a micron—very small particles that enter into the lungs. The science is progressing. The standards are reviewed constantly, so that we are aware of the health impact and can gauge as well the ability of society to move to those clean air standards.

Your question: Are we looking at the European Union and the sorts of standards that exist there? Very much so. We look at the health science that is done around the world. We are aware of the health studies, and we tie in, as Mr. Piché said, to the work that Health Canada does. They have expertise in looking at epidemiological studies and how different air quality affects health in different parts of the world that would be expected to experience different sorts of particulates or pollutants.

So we look at health studies around the world; we're aware of that. We look at the standards that are set around the world to deal with particular issues. We also look at the technologies in use around the world. Indeed, part of what the ministry published on February 10 as part of a proposed regulation to limit NO<sub>x</sub> and SO<sub>2</sub>—nitrogen oxide and sulphur dioxide—emissions, is a methodology whereby we define what we mean by “best available commercial technology economically achievable.”

That's a term that is very important. What is proposed in the regulation is that if a new facility is built in Ontario in one of these regulated sectors—pulp and paper, steel or non-ferrous smelting—we would say to that facility owner, “You are captured by this regulation. We will provide you with allowances for emissions, but we're only going to provide you with allowances that are consistent with this best available commercial technology economically achievable”—BACTEA.

The document that we've published defines for industry how we're going to assess that. Part of that assessment is that they must scan the markets they compete in, they must scan the sort of technologies that are in use, and the lowest-emitting technologies that are appropriate to their circumstance are what we are going to use in gauging the emission rates that are appropriate to those facilities.

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**Mrs. Munro:** Thank you. Have I got time to—

**The Chair:** You'll get another crack. Is it related?

**Mrs. Munro:** No, it's a slightly different topic, so I'm quite prepared to wait.

**The Chair:** Mrs. Churley.

**Ms. Churley:** I want to come back to the emissions trading briefly, because I knew I was going to be cut off, although he's not as strict as the Speaker. The mikes don't go off, do they?

I wanted to just follow up, because I wasn't really clear. You gave a very clear and concise answer, but this is my concern and why I'm coming back to it. As you know, probably better than I do, there is a move afoot for the emissions credit to be integrated with the Americans'. I don't know if you're involved in that or what your statement on that is. In some ways it makes sense, but we know that there is a move afoot. So while what you've said right now is that US coal plants can't apply to buy credits from Ontario, my assumption is they will be able to, and that's my concern. I guess I wasn't clear enough in terms of what we can do now, but this whole emissions credit thing is evolving and it's becoming a very major part of the Kyoto plan and reducing targets, and that's why the integration is being looked at.

The first question is, are you involved in those discussions or is that just the feds at this point? If so, wouldn't my contention from earlier be a fact: If that integration happens, then the trading that could result would in fact be really detrimental to the reduction of our smog levels and, if that's the case, if that happens, shouldn't we then pull smog pollution out of the emissions credit trading?

**Dr. Rockingham:** It's a very interesting question. Let me answer a couple of parts of that. Is there consideration of integrating emissions trading systems with the US? Yes, there is. The ozone annex to the Canada-US air quality agreement establishes a number of mechanisms. I am part of the Canada-US air quality committee that reviews the agreement and the commitments made in the agreement and the research studies that are underway as part of the agreement. It was an important part of the air quality agreement that Canada and the US would try to better coordinate their scientific and economic studies so as to be able to develop better programs, to learn from each other. So the federal government is indeed leading an exercise to look at whether it makes sense from an environmental perspective to allow cross-border emissions trading. The situation there presumably would be that emitters on both sides of the border are capped and that, as in emissions trading, one can buy or sell allowances to other capped emitters. It's part of a system that exists in the United States, where they have, in the case of NO<sub>x</sub>, some 21 states where the facilities face emissions caps and trading is allowed so that a facility in New York can buy emissions allowances from a facility in Ohio. The background again in the US—those regulations that impose caps on facilities do not override any other regulations. So the obligations, because of control

orders or the equivalent in the United States, are not in any way relaxed by the emissions trading system. You cannot buy your way out of those sorts of obligations.

What it does mean, however, is that if a particular jurisdiction, for example, were to lose their nuclear power plants and, therefore, they would expect more production from their coal-fired or gas-fired stations, then they may on a temporary basis—a couple of years—require greater use of those fossil facilities and this provides a way to ration the total allowances that are provided. The environmental benefit is such that the total emission in the airshed, and it is a regional air issue we're dealing with, is not increased because of that. That's the first part: Yes, there is consideration of integration of emissions trading systems across the borders.

As to your concern about what happens if Ontario takes actions to dramatically reduce the pollution caused by the electricity sector in Ontario, and does that mean allowances could be bought by facilities in Ohio, which would just pump out more pollution and that pollution would drift across Ontario, I guess I'd answer in two ways. As I said before, as decisions are made about additional programs in Ontario and as the circumstances for different sectors change, I would expect that the emission limits for those sectors would be revisited by government. Another issue that has been raised, and is under consideration in a number of jurisdictions, is what is called flow control, and that exists right now in the US. What happens is that if the number of banked allowances exceeds a certain threshold, then as facilities withdraw a certain number of allowances from that bank, the conditions for withdrawal change. In effect, when there are large withdrawals from a large bank of allowances, you have to withdraw two allowances to be able to use one. That's a market-based mechanism to ensure you do not have excess withdrawals from the bank at a particular point in time.

That may be one mechanism to address the concern you've expressed.

**Ms. Churley:** Thank you. I'm glad you're on the committee. You could be a politician, and I mean that in the most positive way.

**Dr. Rockingham:** Thank you.

**Ms. Churley:** It's a very good answer because—

**Mr. Richard Patten (Ottawa Centre):** It's an insult.

**Ms. Churley:** No. It's coming from a politician, so it's not an insult. From anybody else I'm sure it would be. You're very good at answering these questions.

That is a major concern, not just for me but for many in the environmental sector and other energy sectors, that these kinds of things could happen.

Do I have another minute to touch on—

**The Chair:** Sure.

**Ms. Churley:** I want to come back briefly—you've covered a lot of it on air quality. My question would be, is there going to be more investment in more ambient air quality monitoring stations, because some of those were cut, and other data collection methods to predict emissions coming from the fleet of cars, and modelling

technology that will calculate the pollution from all these different sources, because that's what the auditor referred to and that's what we're discussing. You talked about some of the things that need to be done and some of the progress that is being made, but in terms of the latest technology, in terms of the need, in my view, for more ambient air quality monitoring stations, is there within the budget some allocation to allow you to move forward with this?

**Ms. West:** Maybe I can ask Carl Griffith, who's the assistant deputy minister of environmental science and standards, to speak broadly—and we'll get to your question specifically—on air monitoring and what we're doing in that regard, and then if you want specific details on budget or investment, we can deal with that as well.

**Ms. Churley:** In fact, maybe we could do it in two parts, because I could touch on the whole budget stuff. There are a couple of other issues. If we're going to do it, then we can do it all in one piece.

**Ms. West:** OK. Why don't I ask Carl, first of all, to speak to air monitoring. He may want to call on a director.

**Mr. Carl Griffith:** Let me try. I think you may have heard this morning that Ontario's air monitoring network is kind of the state of science and we are quite proud of where we are right now.

**Ms. Churley:** Yes.

**Mr. Griffith:** You've also heard that we've been working with various partners to look at different advancements that may be made in the future that we would certainly be very much a part of and be right there to ensure Ontario has the most up-to-date monitoring system. We are always looking for ways to better use our resources, and when new technologies and advancements come, we make the best use of our resources to make those necessary improvements.

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**Ms. West:** Perhaps I could just add as well that we do have Allan Gunn, who's our chief administrative officer, to speak to any specific questions you may have on the budget.

Carl mentioned partnerships. I think one of the things that the ministry is doing is recognizing a need to improve our attention to and our outcome from science and research, and obviously there are limited resources to do that in a dedicated way within the ministry. But certainly partnerships with other jurisdictions, with universities and colleges and with the private sector are very important. I should say that, at least with respect to that, we are paying more attention. We're looking at more creative ways to deal with that. It is a more focused piece of attention for the ministry in the past year and in the years to come.

Perhaps I can also ask Allan Gunn to speak with respect to the investment issues that you had or if you wanted more particular—

**Ms. Churley:** Yes, I asked a specific question, and another specific question would be around the smog patrol. I think we all agree it's got a good record. We

asked the question, I believe, in the House about it facing cuts, and I wonder if you can elaborate on that. Given their record of not being able to follow up with violators to ensure that they have taken the necessary action to reduce emissions, I would assume that shifting more resources into the program would make more sense than reducing it when it's a program that's really working. So it's a couple of examples of areas there where I'm concerned about there just not being enough resources in your budget. I know you have to work with what you're given; I understand that. But this is an ongoing issue, in terms of following through with the auditor's recommendations. There are creative ways, as you said, that you can get at some of them, but in other areas, you simply can only do so much with so many staff and so much equipment. Those two areas, specifically, I'm worried about.

**Mr. Allan Gunn:** Good morning. I'm Allan Gunn, the chief administrative officer for the ministry. I wonder if I could start by just commenting about our budget as a whole, and I could, for the context of the committee, talk about how we've refigured our budget to focus it and give us some of that flexibility. We currently have an overall budget of \$317 million, of which \$299 million is the operating budget, which is a significant piece that pays—

**Ms. Churley:** How much operating?

**Mr. Gunn:** The operating budget is \$299 million. Out of that operating budget comes the salaries and wages that, by and large, pay for the staff—we have a salary budget of \$142 million, which is roughly 50% of the budget—the benefits and then the program support dollars to support that. What we've done is taken the budget and broken it into four key envelopes to give some of that flexibility. We have an envelope for air. The size of the air envelope in our current budget is \$50.8 million, or 16% of the budget.

**Ms. Churley:** How is that different? Has it gone up or down?

**Mr. Gunn:** It's pretty much been consistent. I'll speak in a minute about the budget as a whole over the last five years in general terms. I just thought I'd give you context. There are four major envelopes: There's an air envelope, a water envelope, a waste envelope and a strategic management and program support envelope. The water envelope is 50% of our budget, and it's \$158.4 million of the budget; the waste envelope is 14% of the entire budget, or \$46 million; and the strategic management support is \$57.2 million, or 18% of the overall total budget of \$317 million.

On the operating envelope for air—or any of the envelopes, for that matter—we then try and allocate the resources to the various functions within that. For example, the compliance function, which gives a bit to the smog patrol, would be funded out of the air envelope. What, in general, is happening there—and our operation folks can specifically speak to the smog patrol and how that relates to the risk-based assessment—is that the compliance envelope is taking the envelope that's available and trying

to target those compliance officers to the highest risks that they want to do. So there's flexibility to move the environmental officers from smog patrol to the SWAT offices to district offices or wherever the risks may be and, as turnover takes place within the organization that reaches targets, the operating plans for the year and the issues that are targeted to get the most environmental payback on the compliance staff, and it's a particularly large portion of the staff.

Deb will actually talk to you specifically, if you want, about the smog patrol and how that fits in—there are the SWAT officers and the smog patrol officers—as part of the overall budget.

I'd just comment a little bit on the budget as a whole, because one of your other questions is, what has happened to the budget? Over the course of the last five years, there have been incremental additions to the ministry's budget. It has grown approximately—

**Ms. Churley:** Sorry to interrupt. That would have been from what? I guess you're saying there has been some move upwards, but talking from the base of when it was cut, I guess throughout 1995 and 1996 significantly, you're saying there have been some small improvements since then?

**Mr. Gunn:** Yes.

**Ms. Churley:** I just wanted to establish that.

**Mr. Gunn:** I have the last five years with me. Our operating budget in 2000-01 was \$158 million. That operating budget is now \$299 million. You can see that there has been a series of gradual increases over the last five years. The vast majority of those increases have been in the water envelope: building the drinking water management division and the compliance officers there. But there have been other resources that have come in over that period.

**Ms. Churley:** Sorry to interrupt. I'm just trying to get a handle on this, because I was aware of that, and that was going to be my question. Do you have a breakdown of how much of the increase has actually gone into all of the new water laws that have been passed since Walkerton?

**Mr. Gunn:** I can get that accounting. I don't have that direct accounting with me, as an action item.

**Ms. Churley:** Can I ask to have that provided?

**Mr. Gunn:** I can indeed. I can give you some general sense, but I don't have the specific accounting with me. That has been the vast majority; there's no question about it. In general terms, when you look at the water envelope, a large majority of it is for the compliance staff within clean water. In addition to that, there has been staff added for source protection and resources for source protection and also resources for nutrient management. Those have been the major components in both staff and resources, and also technology to support that. We have invested in a drinking water management system to do that electronically, as well as working on nutrient management and those sorts of systems. We can definitely provide that to you.

Over that same period of time, some of the other significant pieces that were incrementally put into the

budget were base funding for the SWAT team, which is a multidisciplinary team—and it would cover a number of media. There have also been resources put in for brown-fields, as an example. Some technology staff, for sure, have been put in, not only for the drinking water systems, but for other systems like hazardous waste and for management—

**The Chair:** I don't want to interrupt, but we've been going on for quite a long period of time. We're straying off the auditor's report, in terms of the overall budgetary matters of the ministry.

**Ms. Churley:** I agree. Perhaps this is something that I can have a separate briefing on, if you could put together some of this information. I know that you need to move on, but maybe we can come back to the two specific areas when we do the next go-round. We can follow up on this.

**The Chair:** Mr. Patten.

**Mr. Patten:** My question is related to the framework for the national health-based index and how comprehensive it is. I'd like to say this: I'm always surprised when something appears to be really good and effective on the surface, and then later on, as I dig into it, it misses the point on a variety of things; for example, air pollution. We're going to take a look at air pollution. That's not only gases in the air but particulate matter. We know the impact on people and animals and one thing or another, and we're talking thousands and thousands, maybe millions, of tonnes of particles that are being emitted. That falls in our soil, that falls in our lakes, that falls on our forests, and this is pretty serious stuff. My point is that I see a far more integrated impact than simply what's happening with the quality of the air, because it impacts on all those other things. Are there studies, is there a frame of reference that you have that says, "You know, this is not just air we're talking about"?

We know that if you live in Hamilton, your possibility of having asthma as a child is 10 times greater than if you live somewhere else, in another part of Ontario. But this is going into our soil, which means it's going into our food. I do a lot of studying on this stuff, and the pass-through effect is very serious. It adds to the health concern that we have, but we seem to come at it in a very segmented fashion.

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I'm wondering, as your concern for the environment—and of course it's not limited to air, and I know that's what the report is dealing with somewhat today; the environment is the totality of the environment. When you look at this index, does that have those important tangential relationships that also talk about quality and impact on health?

**Ms. West:** Perhaps we can try to respond to this focused not just on the index, because I think your question is a broader question: Are we dealing with things in a segmented manner, or are we making the connections—the connections among the media; the impact upon the media, whether it's water, air or soil, as a result of pollutants—and what does that mean in terms of the

health impact? I think there's a growing field and a growing recognition of the very basic connection between environment and health, and that's associated with the various media that are affected by the environmental factors, whether it's air, water or soil.

Perhaps we'll ask Dale Henry to speak. Dale is the director of the standards development branch, so he perhaps can speak to the broader issues of the connections and the comprehensiveness, and perhaps also in terms of the connection to human health concerns.

**Mr. Dale Henry:** Thank you very much for the questions. What I'm going to do is try to give you some context with regard to the job that my branch does within the development of standards. We're going to talk about standards in general with regard to if it's going to be emitted to the air, to the water—be it drinking water quality standards. I know the focus is on air today, so when we develop standards within the branch itself, we look very comprehensively with regard to the various factors that are going to impact the individual, the human being. But we also go beyond that. We also look at environmental impacts with regard to vegetation. With regard to air, we even look at sooting of someone's laundry, because that can occur with some of the substances that are being emitted. So we look at a variety of impacts that would occur with regard to the development of air standards.

One of the areas that you talked about was that if you have an air emission, it also gets into our forests and into our soil. So we also look at some of the substances that don't break down, such as metals, with regard to accumulating in the soil itself. What we do when we develop our air standards is make sure that we're looking at inhalation with regard to human impact but also looking at the accumulation that's going to occur on the ground with regard to the impact on the soil itself, on vegetation, but also from a different exposure route as people work in their gardens, play as kids in the soils and lick their fingers—with regard to the ingestion route, too.

When we look at developing air standards, we look very comprehensively at the exposure routes with regard to any type of air emissions: going into forests, going into the soil, going into our water, even. We look at that.

**Mr. Patten:** Do you recommend policies on other impacts that you identify, such as the soil? Do you have an interministerial committee that says, "Agriculture: Better take a look at the quality of the soil that farmers are using, because it's contaminated and it's impacting on our health"? Does somebody from health say, "Hey, just a minute. We want to hear from our friends from the environment related to what's happening here, because here's what we're seeing"? Is that kind of activity going on?

**Mr. Henry:** Absolutely. In fact, we have an interministerial committee between the Ministry of the Environment, the Ministry of Health and Long-Term Care, and the Ministry of Labour that gets together a number of times a year.

What we focus on typically, though, is human health. We look at it from the context of the environmental

exposures that we're getting from industry that are coming down on the population itself. We also look at it from a labour consideration. We're looking at that any standards that are developed from an occupational health exposure are in line with exposures with regard to what we're seeing in the environment.

In the occupational field, there are other methods of making sure that the worker is protected. For example, people wear gloves, and that certainly would limit any type of dermal contact. In certain cases, where there are elevated concentrations of airborne materials, protective masks would be taken care of by the employee. So we certainly work with a number of agencies.

There's also an interministerial committee that looks at nutrient management, and we're looking at it with regard to biosalts. This isn't an air issue, but I just think I'll give you a little bit of context.: We also work with other agencies and ministries in developing standards with them that would be acceptable both on the agricultural side of the equation and also on the human health side of the equation.

**Mr. Patten:** Thank you.

**The Chair:** Any questions?

**Mrs. Munro:** I do have a question. I wanted to go back to an earlier discussion that we were having with regard to coal-fired energy sources from the US. As I understand it, in the States there's an increase in the number and size of coal-fired energy sources, and at the same time there's also a whole issue around the cleaner coal technology that I believe the US has embraced. I just wanted to know what kind of impact, when we're talking about the closing of the coal-fired furnaces in Ontario, we can anticipate with this response in the US.

**Dr. Rockingham:** Let me answer the question by, again, just noting that air movement from the US is very important to air quality in Ontario. We are working, through the Canada-US air quality committee, to encourage the US to undertake programs which will reduce the emissions of those sorts of pollutants that move distances to cause regional air issues. Typically, those are NO<sub>x</sub> emissions and SO<sub>2</sub> emissions.

We know that the US is considering further actions. Their most recent initiative, to reduce NO<sub>x</sub> emissions, is typically called the NO<sub>x</sub> SIP Call. That is still coming into effect but was ordered as law some two years ago. So there are tremendous NO<sub>x</sub> reductions that will result in emissions from US sources that are typically able to influence Ontario air quality.

The US does have laws that reduce SO<sub>2</sub> emissions and that cap SO<sub>2</sub> emissions from the electricity sector. Our judgment is that those caps are not as stringent as the caps that are in place in Ontario, and we welcome the activities by the US to review the SO<sub>2</sub> caps. So we're very pleased when we learn of progress on what's called the clean air interstate rule, which will further tighten the limits on the total emissions of both NO<sub>x</sub> and SO<sub>2</sub> from sectors.

Those regulations are silent on how the emission reductions will be achieved, but we do take some comfort

out of the fact that the regulations are written in such a way that there is a cap on the total emissions that can be created, independent of how their electricity sector grows or what plants they choose to install. The discussions are still underway on whether it's possible to find ways of even further reducing emissions.

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**Ms. Churley:** I wanted to come back to the budget and just finish up that piece. It may be that you will want to answer this, but we'll see who wants to answer it.

I asked about a couple of specific areas, but further to that, just in looking at the auditor's report in general and looking at some of the stresses on the ministry and some of your new obligations on top of what you already do, trying to follow up on these recommendations—I can give you some examples. Talking about firms seeking exemptions from complying with the new air standards, which is going to be allowed based on certain things: That obviously is going to require more technical and engineering and other staff. I was talking about smog control earlier and some of the other programs. It's already widely known that there are not enough resources in the ministry to keep up with a lot of things, so you have to be creative and move things around. There are these pressures that I'm asking about—and yes, there have been some additions, mostly going to the water area, which have caused some problems in some of the other areas—but it also looks like there is a 12% cut coming. With these demands, both from following up on the auditor's report and other demands upon you, how are you planning to do all of this with the further cuts coming?

**Ms. West:** Maybe I can make some general comments first and ask Debra to address your questions with respect to smog control, and then I'll ask Allan Gunn to come back and address the cuts issue.

First of all, just generally—and in some respects this is an obvious answer—there are always fewer resources than one would want to do the total job that's required. That's why you've heard us speak a fair amount about a risk-based approach to find a proper methodology to allocate our resources for the best benefit possible.

You're right in terms of looking for other creative ways to address our needs and also to recognize that, in terms of protecting the environment, there are lots of players and there are lots of shared roles and responsibilities to do that. It's not just the role of the Ministry of the Environment or other government jurisdictions; we have to recognize that there is a responsibility on the part of those who produce pollutants, such as industry, as well as the general public, who share a role as well.

As we look at trying to take the broadest, most comprehensive approach to occupying our role in protecting the environment, it includes looking for partnerships, reminding people of their responsibilities and looking at creative ways, whether it's performance-based or risk-based approaches to inspections and approvals. We're starting to explore ways, through a transformation agenda that the minister has mentioned recently, in which we can

look to better cost recovery of our services, look for other partners to take on some responsibility and look at different methods to ensure compliance that don't always solely look at inspection, orders and charges, but look at it more upstream in terms of how we can encourage and support and educate others to assume their role appropriately. It always is a challenge, but we're trying to be as creative as possible in our approaches.

Why don't I ask Deb Sikora to speak to the smog patrol issue and compliance, and then I will ask Allan to speak to what we see going forward in terms of the expense limits that have been identified for the ministry.

**Ms. Churley:** The cuts that are coming; right. OK.

**Ms. Sikora:** Thank you, Deputy. I can certainly address your query about the smog patrol program. One of the things that we do, as Allan and the deputy mentioned, as a ministry and certainly as an operations division, is go through an operational planning process where we look at what our priorities are with respect to the business that we do in our respective divisions. As an operations division, indeed we did look at one of our programs, including smog patrol, in an effort to look at program improvements and enhancements.

As you know, smog patrol is our on-road enforcement arm nested within the environmental SWAT team. We do target grossly polluting vehicles on Ontario roads, both licensed in Ontario and outside Ontario. We have indeed looked at a realignment of the smog patrol program and adopted some of the best practices that we have found coming out of our SWAT sector-based inspections, and we have applied that rationale and model to the smog patrol area. So we are certainly looking at targeting the higher-risk sectors and we are also looking at realigning the way we actually do these inspections. So as opposed to perhaps a more random approach to looking at targeting, we are looking at very specific sectors, focusing some of our inspections on heavy-duty vehicles, perhaps areas like taxis and tow trucks, focusing our resources in the areas where we hope to achieve the best air quality improvement.

**Mr. Gunn:** In terms of planning and going forward, we have been given four-year planning envelopes. Of course, decisions haven't been made and we haven't been given any direction on reductions or of things to take place. But some of the activities that we are involved in—

**Ms. Churley:** But there was something in the last budget, you'll recall. So you weren't given any direction?

**Mr. Gunn:** We've not been given specific direction or decisions, but I could give you an example of some of the things we're looking at that are directing our priorities away from front-line staff and participating in things like cross-ministry initiatives. For example, there is an initiative within our technology world, and what we're looking to do is see if we can't consolidate all of the servers and stuff across government to be able to use the computers in a more efficient manner, so directing our energies in those areas; also, clustering more of our efforts working together. Again, the technology world is already working

in clusters—looking for other opportunities to do kind of backroom, middle-room types of things, continuing to work with the Ontario Shared Services Bureau to consolidate the services there to generate savings of that nature.

There's another initiative called supply chain management that we're all participating in to ensure, through the Ontario Shared Services Bureau, that we generate savings in the procurement and methodologies of government. Right now that's where our efforts are focused, directed away from front-line environmental delivery.

**Ms. Churley:** So you're trying—you have to make these cuts—to do it without impacting front-line service.

**Mr. Gunn:** Absolutely.

**Mrs. Sandals:** I'm going to share my time with Mr. Wilkinson, if I may, Mr. Chair. I have another request for you: You mentioned lunch once.

**The Chair:** It should be in the other room now. I asked for it to be brought—

**Mr. Wilkinson:** I think we're winding up.

**Ms. Churley:** Just for the record, although I have many other questions, for the purposes of today, that was my last question. I don't know about you.

**Mrs. Sandals:** Then why don't I ask, did Julia or Jim have—

**The Chair:** I don't know.

**Mrs. Sandals:** Can John and I ask our questions quickly?

**The Chair:** Sure. Go ahead.

**Mrs. Sandals:** OK. What I wanted to do was look quickly at the recommendations on page 121 of the auditor's report, which reference developing and updating air quality standards and guidelines on a timely basis and "consider using up-to-date air dispersion models."

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The research staff and the deputy's presentation have both drawn to our attention that Ontario's five-point plan for cleaner air has been announced since the time when the auditor was doing his work. It struck me that a couple of the items in there appear to address these recommendations. I'm wondering if you could quickly comment on whether or not that's true and what the effect will be. One is setting tough new and updated air standards for 29 pollutants, and the other is updating the air-dispersion models. I'm wondering if you could give us the connections and what impact that would have.

**Ms. West:** Mr. Henry will help you with that.

**Mr. Henry:** With regard to the five-point plan that was announced in June 2004, three components of it were dealing with having more stringent air standards, having better air-dispersion models and using a risk-based decision-making process to assist us in implementing these more stringent standards. In that announcement, there were a number of advancements that we made with regard to our air quality standards. We looked at advancements of 43 substances; 35 of them were high-priority. There were five new substances that we also introduced, and there were three secondary priority substances.

One of the key components of that was also updating our air-dispersion models. When we talk about air-dispersion models, we're not talking about global air-dispersion models; we're not even talking about regional air-dispersion models. We're talking about air-dispersion models that would be used by a company or a facility to determine what their air emissions values would be outside their fenced property to protect the health of people, to protect the soil, the property. Our air-dispersion modelling capability has been on the auditor's plate for updating. We are moving forward with updating these air-dispersion models. We're looking at using the US EPA models that evaluate industrial facilities with regard to their impact on the local environment.

Finally, we're also looking at doing a better job in implementing our air standards. This is certainly one of the challenges the province has had in introducing new standards. The challenge we faced on that was implementing new standards with regard to timing of a company to actually implement them, economics, and also technology. We put into the proposal posted on June 21 a risk-based decision-making process to assist companies in implementing new air standards as they come out.

**Mrs. Sandals:** So it appears with this update that these recommendations are being addressed.

**Mr. Henry:** Yes.

**The Chair:** Can I ask a supplementary to Mrs. Sandals's question? The proposal that was put on the EBR on June 21 asked for a lot of input from people. Where is that proposal now? Can you update us on the results of those consultations? Where is it now?

**Ms. Andrew:** The five-point plan covered a number of different initiatives. For the industry emission reduction program, we've moved through the consultation process and the government has made a decision to post a draft regulation for the emission reductions for those 30 major industrial emitters. That was posted on the EBR—on the environmental bill of rights registry—last week, for a 30-day posting.

That addresses two points of the five-point plan, because it sets the emission reductions for now and up to 2015 for both NO<sub>x</sub> and SO<sub>x</sub>. The three other points of the five-point plan are related to standard-setting.

**Mr. Henry:** They're currently under development with regard to amending regulation 346. Just to provide you some information about the package that was sent out, there were a number of stakeholder meetings held once it was posted on the environmental registry back in September, since it was a very complex package. We provided our stakeholders across the province the opportunity of 120 days to comment on it, considering that the five-point plan was quite complex. In the fall of 2004, we had a number of workshops that were attended by over 400 individuals representing a variety of industrial sectors and environmental groups across the province. We received over 70 comments from various facilities, environmental groups and associations.

**The Chair:** Ray, did you want any—our researcher would just like to get something clear.

**Mr. Ray McLellan:** If I could ask with respect to this notice of proposal, there are four or five points identified here with respect to guidelines and amendments to the regulations. Is it possible to have a written response to update the committee so that we can go back and read through exactly what has happened? I think we've touched on a lot of these today, but it's starting to get a bit mixed. And then, if you could link that into that June 21 five-point plan. Parts of those five issues have been discussed today, but I think it needs clarification so we can see exactly where we are today.

**Ms. West:** We'll follow up on that.

**The Chair:** Mr. Williams?

**Mr. Wilkinson:** I go by Wilkinson, if that's OK.

**The Chair:** Wilkinson, sorry.

**Mr. Wilkinson:** It's all right, Mr. Sterling.

My question will be on the Drive Clean side. As you get your person available for that, I would agree with the member for Toronto–Danforth on two points. Dr. Rockingham actually is an excellent person to have to deal with on a day-to-day basis for a layperson like myself. I know that he and Jim O'Mara both have been very helpful in trying to get someone like me to understand these issues and to get a handle on them. And I would agree with you, as you noted, that it's very difficult to get your neighbours to cut their grass if you haven't cut yours. With regard to coal, I think we do have to work with our American neighbours. I'm heartened to see that we are working closely with them to try to eliminate the cheapest yet dirtiest form of electricity generation in North America.

My question has to do with Drive Clean. I note that the limit has been raised with regard to repairs from \$200 to \$450. I just went through Drive Clean myself and, unlike this paper-based system, I know that when I got my certificate done, when I went over to MTO, it was already there, so it was one of these electronic filers. It must be disturbing, I think, for some who created Drive Clean to see that you actually have to work with the OPP to try to help them in their investigation of abuses of that system. I'm glad and heartened to hear, from the government's perspective, that you're working closely to be helpful in that.

The rationale to go from \$200 to \$450 goes to my question: Do we feel that this is the type of stuff with which we're going to get demonstrable improvements in air quality, by raising—I don't know the rationale for the \$200 in the first place and the rationale for the \$450 now, so if I could just get some comment on that, it would help me.

**Ms. West:** I'll ask Carl Griffith to do this.

**Mr. Griffith:** Let me start. We believed that the movement up to the \$450 would then capture when repairs have to be done at the \$200 level. We've all taken our cars in to mechanics, and \$200 doesn't buy you a whole lot. So what was happening was that people would get partial repairs done. That may not fix the problem from an emission point of view. It was felt that raising it to \$450 would capture far more of a complete repair test

and we would get the emission results that we were looking for. I would add, that is one of the things we'll be looking at in the program review that's underway as well: Is that the right level of repair costs?

**Mr. Wilkinson:** It's my understanding that it's not just cars now; there has been a broader capture of vehicles. Is that true as well?

**Mr. Griffith:** We do heavy-duty vehicles.

**Mr. Wilkinson:** Right. But are there limits on that as well, or is it unlimited? They need to get them fixed up.

**Ms. Morah Fenning:** My name's Morah Fenning. I'm director of the Drive Clean program. Was your question, do heavy-duty vehicles have to be fully repaired before they pass?

**Mr. Wilkinson:** Yes.

**Ms. Fenning:** The answer is yes.

**Mr. Wilkinson:** Yes, OK. Thank you very much.

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**The Chair:** I'd like to ask Mr. Piché a question or two. You've been with the ministry a long time. How long have you been with the ministry?

**Mr. Piché:** Thirty one years, sir, I'm very proud to say.

**The Chair:** I'm very proud to say that you've done a tremendous service for the people of Ontario. Because you've had 31 years there, could you give us an historical context of air quality in Ontario as we've gone through those 31 years? Is the air better now than it was then? Where did we start then? Where are we now in terms of monitoring our air quality?

**Mr. Piché:** Ontario is a very unique jurisdiction. Of course, I think we all believe that or we wouldn't be living here. But it is very unique because—and many may not know—we have published an annual air quality report. I think the recent one is number 33. I'm very proud because I think more than half of them have been done when I've been director in one capacity or another. That report is available on the Web site, so if you go to the Ministry of the Environment Web site, you can see that report and the history of those reports.

If you look at the annual air quality report, you'll see that Ontario does have a very enviable record in improving air quality for what I would call the so-called criteria pollutants. They're a special subset traditionally associated with heavy industry. An example would be sulphur dioxide, but particulates are another area—oxides of nitrogen and so on and so forth. If you look at that report, you'll see there is a very enviable record over that time comparable to any jurisdiction nationally and internationally in terms of improvement in air quality. That doesn't mean we need to diminish our vigilance; quite the contrary. There are constant and ongoing challenges. As Dr. Rockingham has indicated, Ontario is consistent and has been consistent in working very hard with neighbouring jurisdictions to meet those challenges.

But in succinct summary, there have been very, very significant improvements done in partnership with the federal government and with our neighbours, but never-

theless there are still very significant challenges and the ongoing need to be vigilant.

**The Chair:** Is there any way that you could quantify how much we can do domestically in the province to improve our air quality and how much has to be done co-operatively with other jurisdictions around us?

**Mr. Piché:** Yes, there are always methodologies available. I think Dr. Rockingham indicated earlier that Ontario is an economic community within the very powerful Great Lakes economic community and that we need to be concerned about our own sources and their impact on our health and on our environmental health. But we also need to be very, very sensitive and strategically aware of our neighbours and their contribution to our air quality and our environmental health and of our contributions to their well-being, to their environment and environmental health.

The principal methodology that's used, of which Ontario fortuitously has very skilled practitioners, is modelling. We provide support to Dr. Rockingham's community as they look at various scenarios: If we reduce this sector by this amount, what is likely to happen? But remember, the models are what I would call reasonable estimates of the likely consequences. The true test, ultimately, of course, is to embark on the initiatives and then carefully measure what happens.

An excellent example in Ontario, ladies and gentlemen, is what I call the greater Sudbury scenario. Beginning in the late 1970s, everyone knew that Inco and Falconbridge were very, very significant contributors, provincially, nationally and internationally, to the acid rain phenomenon. Over a period of about 25 years, very, very significant reductions were evidenced by those sources, well in excess of 90%. Of course, the great part of the story was that there was a very significant recovery through our monitoring programs, unequivocally demonstrated in the literature, of the lakes in the greater Sudbury area. Now, the story isn't finished yet. There's still immense work to be done, provincially, nationally and internationally, but nevertheless the data are there. The monitoring networks have unequivocally demonstrated the benefit of those regulatory programs for Ontario and for northeastern North America.

**The Chair:** Are there enough mechanisms now to deal with our border friends, to the south in particular, in terms of our American counterparts? In other words, can our federal or provincial governments do more in concert with the United States, because they are immediately on our borders, to improve our co-operative efforts? There are some mechanisms now, but I'm not certain that the Americans think as much about us as perhaps we think about them on this issue.

**Ms. West:** Mr Sterling, if you're talking about mechanisms in terms of relationships, influence and that sort of thing, I wonder if you would like to hear from Dr. Rockingham with respect to that. I'm not sure that Ed would have any particular comment. Ed?

**Mr. Piché:** Tony certainly has the appropriate responsibility within the ministry to comment on that.

**The Chair:** You may remember, Mr Piché, that I asked you about the quantifying, and I was interested in that answer. But at any rate—

**Ms. West:** Tony may be able to respond to that, sir.

**The Chair:** Thank you very much.

**Dr. Rockingham:** I feel like a youngster, with just nine years' experience at the Ministry of the Environment.

Your question: Are there enough mechanisms for Canada or for Ontario to influence US emissions and laws around emissions? Maybe I'd start with, as I said, the Canada-US air quality agreement, and there are a number of committees associated with that. I have the honour of sitting on one committee which is associated with the overall policy direction and undertaking studies around whether the commitments are being made. There is a subcommittee, number two, which deals with science, and I think the agreement has been very successful in ensuring that studies are taking place that don't just stop at the border. If you look at maps done by the EPA on pollution trends, 10 years ago those maps had a great blank area north of Lake Erie. I'm pleased to say that in the most recent progress reports under the Canada-US air quality report those blanks are now filled in and there is a recognition that the trends one can see by looking at the geography across the US continue north of the Great Lakes. That has been very helpful in our argument that emission sources in the US are influencing air quality in Ontario.

The other mechanisms: I don't need to remind you of some of the court action that Ontario has engaged in for the NOx SIP call. When that was being challenged in the courts, Ontario applied for, and was granted, status and made a submission to the US courts to assist the courts in deciding on some of the science and implications for other jurisdictions, and that's allowed for in US law. So that is an opportunity that exists.

We jointly study with the US, not necessarily with the EPA but some of the state departments, and there are initiatives associated with particular states where we are gathering together information on the policies and tools that exist in Michigan and Ohio, and compare them with what's happening in Ontario in an effort to ensure that both jurisdictions can understand best practice and im-

prove the tools that are applied. So there are a variety of mechanisms that exist and those can be used, and probably most appropriately, with different sorts of pollutants.

I think one of the very major tools that we are using right now is the increased scientific co-operation, because 10 years ago I don't think it was true that PM2.5 was seen as one of the major pollutants. Through co-operative research with the United States and around the world, it's now understood that these very small particulates may not be what cause the grey pall or the brown haze that's associated with smog, that they're small enough that they may not be part of that. The science continues to look at these submicron-sized particles which may well be getting into the lungs and past the lungs and getting into the bloodstream. So there is a tremendous amount of scientific work that's needed because it may be that it's not just the particles that are the cause. You need to know the nature of the particles that you're talking about. If they are ionized particles, they may be doing more damage than if they're not ionized particles. Or if they're particles that have particular configurations—essentially, I think of them as sharp edges—are they causing more health problems? That's an area where the US and Canada can move forward by assisting each other. Canada has established a substantial reputation for scientific work in this area. So there are lots of mechanisms.

Again, many of the members here would be aware of the work that was done in the 1980s around acid rain where Canada and Ontario, and this ministry in particular, were very important in bringing together the science in a form that decision-makers could understand, to assist decision-makers, both in the US and Canada, in understanding the problem, in understanding the sources and in understanding the sorts of programs or regulations that would be appropriate for reducing those emissions. As a result, there have been major reductions in SO<sub>2</sub> both in Ontario and in our neighbouring US states.

**The Chair:** Any more questions?

Thank you very much for coming today.

**Ms. West:** Thank you, Mr. Chair.

**The Chair:** I hope you all enjoy an early lunch.

**Ms. West:** Thank you for that as well.

*The committee adjourned at 1233.*



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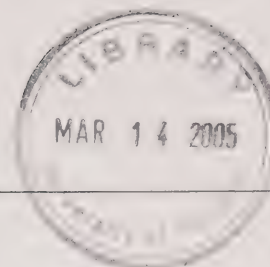
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First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 24 February 2005

# Journal des débats (Hansard)

Jeudi 24 février 2005

## Standing committee on public accounts

2004 Annual Report,  
Provincial Auditor:  
Ministry of Health  
and Long-Term Care

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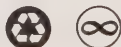
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STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Thursday 24 February 2005

Jeudi 24 février 2005

*The committee met at 0937 in committee room 1, following a closed session.*

2004 ANNUAL REPORT,  
PROVINCIAL AUDITOR  
MINISTRY OF HEALTH  
AND LONG-TERM CARE

Consideration of section 3.08, independent health facilities.

**The Chair (Mr. Norman W. Sterling):** I think we're ready to begin. My name is Norman Sterling. I'm the Chair of the committee. You can see the names of the various members of the committee in front of their desk.

I believe, Ms. Rappolt, you are heading the delegation. I would ask you to introduce those people sitting with you. If you require other people to come forward, then perhaps you could introduce those people at that time. The microphones come on automatically, just so you know. Do you have any opening comments that you would like to make?

**Ms. Marg Rappolt:** Yes, I do, Mr. Chair. Thank you and good morning. I am Marg Rappolt, the Acting Deputy Minister of the Ministry of Health and Long-Term Care. To my right is Marsha Barnes, the director of the independent health facilities program at the time of the audit. Directly to my left is Jeff Morgenstern, who is the manager of the independent health facilities program, and to his left is Susan Fitzpatrick, the executive director of the health services division.

Mr. Chair, ladies and gentlemen and honourable members, it's an honour to be here today before the public accounts committee of the Legislature, more specifically, to make remarks and to answer your questions regarding the Ministry of Health and Long-Term Care and what is has done to respond the 2004 provincial Auditor General's report as it relates to independent health facilities.

As you know, the auditor's report provided advice and raised some concerns about independent health facilities in Ontario. It goes without saying that the ministry takes all comments made by the Auditor General very seriously, no matter which of our operations, programs or services they may impact.

I want to assure members of this committee that in the year since the Auditor General's report was released, the ministry has been moving forward with a plan to respond to the recommendations and the concerns. We welcome

the findings, and we thank the Auditor General for his recommendations. They serve to shed more light on the path ahead.

Accountability in all of our operations is paramount. So if I can, I'd like, with our team, to be very specific about how the ministry has responded to these recommendations. Before moving into more detailed responses, though, I'll make some general comments about independent health facilities in Ontario.

Independent health facilities are needed community-based health care operations. As members of the committee know, they provide both diagnostic and surgical treatment. Some of them have a long history of working with Ontario patients.

There are a total of 955 independent health facilities in Ontario, with 924 diagnostic facilities providing important services such as radiology, nuclear medicine, ultrasound, and pulmonary function and sleep studies. Seven of these facilities provide MRIs and CTs. There are 24 licensed ambulatory facilities providing dialysis, plastic surgery, abortion, retinal and cataract surgery, vascular surgery, laser dermatology, and obstetrical and gynaecological surgery. An IHF may be established in a variety of settings; for example, completely free-standing, located on the site of an existing health facility or in a multi-office complex.

Their presence helps to reduce wait times, and reducing wait times for key services is one of the main planks in the government's broader strategy to transform Ontario's health care system. The ministry has committed to providing timely and appropriate access to health care services, including cancer surgery, hip and knee total joint replacements, cardiac surgery, cataract surgery and MRI/CTs. Significant investments have been made thus far, and the government has a plan to do more.

I'd also like to note that the Auditor General was categorical in stating that the ministry has "adequate procedures in place to ensure compliance with applicable legislation and policies for the licensing, funding, and monitoring of independent health facilities." But the auditor said that "if the program is to cost-effectively fulfill its mandate, action is still required" to address a number of issues.

Let me get to the specifics, line by line, so to speak.

The first recommendation of the Auditor General was:

"To help ensure that facility fees paid to independent health facilities are reasonable, the ministry should:

“objectively determine the current cost of providing each type of service; and

“examine the relationship between the volume of services provided and the costs of providing services.”

I am pleased to report that our work on this very important and complex recommendation is in progress.

In order to address the issue of facility and technical fees, the ministry agreed, as part of the 2003 memorandum of agreement with the Ontario Medical Association, to establish the diagnostic services committee, or DSC. This committee will function as an advisory body to the minister for the purpose of planning and coordinating an efficient and effective diagnostic services system in Ontario. The DSC will also examine how the technical component of diagnostic services, currently described as technical fees, will be evaluated, compensated and administered. This includes establishing a costing methodology and an ongoing review process to reflect that reimbursement is based on actual costs and current service volumes.

In another recommendation, the Auditor General said:

“To help ensure that the services provided under the Independent Health Facilities Act are reasonably accessible to all Ontarians, the ministry should:

“assess the need for each service by region and determine what actions are required to meet its commitment to provide services where and when needed.”

He also recommends that the ministry “assess the implications—from a financial and waiting list perspective—of licensing more than one independent health facility to provide cataract surgeries.”

The diagnostic services committee will use a planning-based approach for the diagnostic services system, including making recommendations to address access and health care needs. This will include addressing issues such as access in underserved areas, new approaches to meet patient needs and capacity and wait-list issues.

The diagnostic services committee will provide advice and recommendations on the funding and structure of the province-wide diagnostic system, including the use of new funding for diagnostic services. Work on this recommendation is in progress, and the expected date of completion is the spring and summer of 2008.

On the question of assessing the implications of licensing more than one independent health facility to provide cataract surgery, the ministry has conducted a needs assessment to identify areas of the province in greatest need of additional cataract surgery services. As a result, we are looking at a range of options to meet community needs, including independent health facilities.

In yet another recommendation, the Auditor General said, “The ministry should also determine what legislative or other actions should be taken regarding unlicensed facilities” which offer “surgical and other procedures” generally undertaken “in hospitals or licensed independent health facilities.”

Once again, work on this recommendation is in progress, with an expected completion date of the fall of next year.

The structure of the act is such that the definition of an independent health facility, and the problems and penalties associated with operating an unlicensed facility, all hinge on the charging of a facility fee as defined in the legislation. Facilities that forgo the charging of facility fees do not require licensing under the act and are not subject to its quality assurance provisions. The imposition of the quality assurance established under the act on facilities performing IHF-type services, yet not licensed, would require significant amendments to the legislation. The ministry fully supports the consideration of this issue under a policy review of the act.

Moving on to yet another of the recommendations, the auditor said:

“To help determine the severity of regional service-level fluctuations, the ministry should:

“develop and implement a waiting list management system; and

“monitor and analyze waiting times.”

In an effort to manage wait-lists, the government has committed to provide timely and appropriate access to key services, including the five key service areas that I discussed earlier. Initial activities to address the length of time Ontarians wait for health care services, as part of our wait-time strategy, will include the development of a comprehensive information system so that the province has the capacity to compile, measure and evaluate wait times in all facilities providing key services. This includes independent health facilities. This information will be publicly reported so that patients and their providers can make informed decisions about their options and feel certain that their needs are being addressed. Work on this recommendation is also in progress.

The Auditor General also recommended that to “help ensure that independent health facilities are being appropriately used to meet ... health care needs ... the ministry should implement a process for determining whether particular services should be provided by hospitals or by licensed independent health facilities.”

I’m pleased to report that this recommendation has been implemented. We believe the introduction of any service, either in a hospital or in an independent facility, should consider the best mechanism for delivering the service for the benefit of the patient. Senior officials at the ministry assess the best possible options and venues for providing patient care and optimizing available human and financial resources.

The process for the creation of new independent health facilities requires the minister to authorize the issuance of a request for proposals. In deciding whether to issue a request for proposals, the minister must consider the items set out in section 5 of the Independent Health Facilities Act, including current and future need for the service. The minister must also consider the extent to which the service is already available and, of course, the projected cost and availability of public funds.

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Our independent health facilities program currently includes an assessment and/or rationale for establishing

an independent health facility-based service, as opposed to a hospital-based service, as part of that material for the minister's consideration. This generally includes a cost comparison between hospital-based and independent health facility-based services, along with an assessment of the complexity of the service. It also includes quality assurance issues associated with providing the service in a non-hospital setting.

Continuing with other recommendations, the auditor also said, "To help ensure that the College of Physicians and Surgeons is meeting the ministry's expectations regarding the assessment process and the development of clinical practice parameters and facility standards, the ministry should regularly update its agreement with the college." It was suggested that this be done in a signed memorandum of understanding.

The ministry supports this recommendation as well, and I'm pleased to report that work on implementing it is in progress. The need for this memorandum was discussed with the college at the December management working group meeting. I should report, however, that it requires significant discussion with the college to resolve issues on program objectives, scope of activities and deliverables. Having said that, we are determined to move ahead, and the memorandum is to be developed and implemented for the 2005-06 fiscal year.

In another recommendation in his 2004 report, the Auditor General notes: "To help provide assurance that independent health facility services comply with clinical practice parameters and facility standards, some assessments should be performed without advance notice."

On this recommendation, we have also initiated discussion with the College of Physicians and Surgeons of Ontario. We hope to develop with them policies and procedures defining circumstances under which unannounced assessments will be conducted. Work on this recommendation is in progress, with an expected completion by either this year or next. The policy will be implemented upon receipt of necessary approvals.

Moving on, the auditor further recommends:

"To help improve the effectiveness of the assessment process, the ministry should establish time frames for:

"the submission of assessment reports by the college ... to the director of the independent health facilities program; and

"the forwarding of information from independent health facilities to the college that provides assurance that any required corrective action" be "taken on a timely basis."

Work on this recommendation is also in progress, with an expected completion date of this year or early next year. I should note that the College of Physicians and Surgeons has committed to a turnaround time under a new process of within 10 business days of receipt of the report. This is for facilities determined to be operating in a manner prejudicial to health and safety. Their turnaround time will be 72 hours for immediate health and safety risks. This will allow the ministry to respond to

these important health and safety issues in a more timely fashion.

I should point out that current letters to the licensee include that the licensee must contact the CPSO within 15 days of receiving the report. For more serious concerns, but not requiring licensing action, the licensee is instructed to contact the college within 15 days and to submit a written plan addressing the recommendations within 30 days of receipt of the report.

The Auditor General further recommended:

"To help improve the effectiveness of the process for assessing independent health facilities and to help ensure that quality standards are met, the ministry should:

"have a formal policy on suspending facilities with serious quality assurance issues, especially when the same issues arise on reassessment; and

"consider charging facilities for reassessments."

The ministry supports the recommendation of a formal policy. The ministry will develop a policy establishing circumstances under which licensing action will be taken for repeat quality assurance problems where the deficiency, in itself, does not constitute a health and safety risk or an immediate threat. The ministry also supports that charges for reassessments be considered. The ministry will develop an options paper setting out the process for implementing this change and the advantages and disadvantages of charging the licensees costs for reassessments. Work on both aspects of this recommendation is in progress, and we're hoping to have an expected completion date of 2005-06.

To help protect the public, the Auditor General recommended: "The ministry should consider appropriate public disclosure of serious quality assurance problems at independent health facilities."

Let me say the ministry also supports the recommendation that this issue be considered. Work on it is in progress, also with an expected completion date of this year or early next.

Our ministry will also develop an options paper on this matter. A number of issues need to be considered in the development of a system for such public disclosure. These considerations include: the retention period for the information; the posting of proposed suspensions while under appeal; the impact of changes in ownership on posted information; as well as timing for the posting of information and so on.

The Auditor General further says: "To help ensure effective assessment of the quality of services provided by independent health facilities, the ministry should work with the College of Physicians and Surgeons of Ontario to ensure that:

"the sample of services to be assessed is sufficient to reach a conclusion and is selected from a complete listing of all services rendered to patients; and

"the sample is selected independently by the college or by the ministry."

This is another good recommendation and the ministry supports it. The issue will be discussed with CPSO, and requirements for review of files and sample selection will

be included in the memorandum of understanding between the college and the ministry.

Work on this recommendation is also in progress, with an expected completion date of 2005 or 2006.

We discussed the matter with the college of physicians at the December management working group meeting. Requirements for sample size and selection process were scheduled for discussion at this month's meeting of the group.

There are two more recommendations I'd just like to give you details on. The auditor said: "To help ensure the consistent quality of medical services in Ontario and to help minimize the risk to patients, the ministry should assess which diagnostic and surgical services performed outside of hospitals and licensed independent health facilities should be covered by the Independent Health Facilities Act."

I'm pleased to inform the committee that this recommendation has been implemented. Any decision to expand the independent health facilities program to include additional services must balance the cost of implementing a licensing and quality assurance program against the need for: enhanced quality assurance of services performed in community-based settings; and planning and utilization controls on the service achieved through the independent health facilities licensing scheme.

The ministry developed criteria in 1997 to evaluate proposals for expansion of the act to include additional services. These criteria were used to regulate sleep medicine facilities under the act and it led to the licensing of sleep medicine facilities through changes to the schedule of benefits in 1998.

These criteria should continue to be used to evaluate any proposals for expansion of the act to include additional services. Evaluation of proposals for new and/or expanded services under the IHFA will be conducted on a case-by-case basis.

Finally, the Auditor General recommended: "To help ensure that new facilities that are brought under the Independent Health Facilities Act in future meet quality standards, the ministry should:

"inspect all such facilities on a timely basis; and

"follow up on identified problems on a timely basis to verify that corrective action has been taken."

The ministry supports this recommendation. To ensure that any future grandfathering situation is resolved in a timely manner, the ministry recognizes the need to ensure that sufficient dedicated resources, both within the independent health facility program and in the college of physicians, are assigned to the inspection and licensing processes.

Work on this recommendation is in progress.

Once again, I'd like to thank the Auditor General for these very useful recommendations. As you can see, the ministry has taken the recommendations very seriously. We're working hard to address these concerns.

On behalf of the Ministry of Health and Long-Term Care, I'd like to thank the committee for this opportunity

to provide a full response in answer to the issues raised in the Auditor General's report.

It goes without saying that we at the ministry respect and appreciate the process of the auditor's reporting and of this committee's work.

Our work at this time is so important to the people of Ontario, and no one knows it more than the dedicated staff of the ministry.

I thank you, Mr. Chair and committee members, and we're now available for questions.

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**The Chair:** Mrs. Munro, did you want to go first?

**Mrs. Julia Munro (York North):** It doesn't matter. No. That's quite all right.

**The Chair:** Go ahead, Bill.

**Mr. Bill Mauro (Thunder Bay-Atikokan):** Thank you for your remarks. I'm just wondering if you can speak to me a little bit about the RFP process that was undertaken with the issuing of the seven private MRI/CT scan facilities several years back.

**Ms. Rappolt:** Certainly. I'll begin with some remarks, and I may refer to Marsha Barnes, to my right.

There was an RFP issued in the fall of 2002 to proceed with seven MRI/CT services and clinics. As the members are aware, in relation to the commitment of this government to ensure that diagnostic services are provided in a way that best meets community need, the government proceeded with us pursuing what we call a conversion process for those clinics. That process has taken place successfully with regard to four of those clinics, and those clinics are now operating as non-profit clinics in four centres in the province. There are discussions and negotiations regarding the conversion of three remaining clinics ongoing.

**Mr. Mauro:** I'm sorry, to your right is Marsha, is it?

**Ms. Rappolt:** It is Marsha.

**Mr. Mauro:** Marsha, can you speak a little bit more about the details of the process? Was it a sole-source contract? Was it open to everybody to bid equally?

**Ms. Marsha Barnes:** It was a competitive bid process. Under the legislation, the minister can direct the director of independent health facilities to issue a competitive request-for-proposals process. In this instance, that's what he did. We provided information to him in making the decision on the need for the services and availability of funds and the future need of the services.

Based upon that information, the call for proposals was directed at specific geographic areas. It followed the normal procurement processes for government, where we had bidders' meetings and answers to questions that were provided in writing.

That was then followed up by a formal evaluation process, resulting in award of the licenses to the contractors and operators. There was one area where an award was not made, and that was in Brantford, because the results of the proposal request came in so that it would be more cost-efficient to provide the services in hospital than in an independent health facility. The de-

cision on that case was made by the minister to cancel that RFP.

**Mr. Mauro:** You spoke a bit about the audit that was first performed on IHFs in 1996. There were, I think, some recommendations or at least mention of challenges that the auditor felt were existing at that time, some of which don't seem to have been addressed. I'm more concerned about—and it sounds like you're saying they are being acted upon now.

Two points that were raised, actually, as a result of that audit: one was the appropriateness of the fees that were being charged in the independent IHFs at that time; and the second was the relationship between the volume of the work relative to the overall cost being submitted. So I'm wondering if you can speak to me a bit about that. What's happened since 1996 until now, and the work that's ongoing today to try and address it?

**Ms. Rappolt:** I'll begin, and I may ask my colleague Jeff Morgenstern, the manager of the program, to the left.

Yes, it is the case that, in the audit from 1996, there were questions raised or considerations given to the ministry to ensure that the services and the cost of the services did better reflect both in terms of volumes and the actual price. What we've proceeded with is an understanding through the diagnostic services committee that I referenced quite recently with the Ontario Medical Association as a result of an agreement with the medical association in 2003. We've agreed that the diagnostic services committee will play a significant advisory role with us in ensuring that in our assessment of need, we're taking appropriate care and paying attention to issues of price and volume.

**Mr. Mauro:** Yes, but it was recommended in 1996, and the DSC is now just beginning the work that you're speaking to. So I'm wondering if there's any substantive reason why something had not begun sooner.

**Ms. Susan Fitzpatrick:** I think there has been substantial work going on since the late 1990s. It's a complex area spanning several sectors. It's not just the independent health facilities; it's also hospitals that receive technical fee payments. There have been committees. There was a committee on technical fees, followed by a diagnostic services development team that actually did a lot of work on how we should plan and set these fees. So there are literally hundreds of fees that are set in a complex way, and they're billed in more than one sector. So out of that work, I think the OMA, the ministry and the OHA, as well as the independent health facilities, realized that that group has to work together to set the fees. We can't do it in isolation of that.

**Mr. Mauro:** Last question, Mr. Chair: Previous to the introduction of the Independent Health Facilities Act, is it fair to say that there was no governance structure, no regulation at all of these?

**Ms. Barnes:** I would say that it's partially correct. Most of the facilities, at that time, were funded through OHIP, so that their physicians were providing the services and billing through OHIP. There was no formal quality assurance program, and the services were perhaps

not appropriately attributed to the operator of the facility, so that there was a use of a billing number that perhaps was less than appropriate at the time.

**Mrs. Munro:** My question really follows very much from the comments that have just been made on the diagnostic services committee. I think it's really important for us to understand why something that was identified several years ago appears only to be making its presence. I think it's really important for us to understand the complexity of the situation.

If you can, I'd like you to give us a picture, since on page 5 you talk about it functioning as an "advisory body to the minister for ... planning and coordinating ... efficient and effective diagnostic services...." In your best-case scenario, where would you like to be? Between the College of Physicians and Surgeons, the hospitals and the independent health facilities, what would be your ideal in their relationship and where this would take you then, in terms of the goals of this committee?

**Ms. Fitzpatrick:** I think the committee has a broad structure for planning and advisory, specifically on the issue that was raised previously. They also are very interested in the funding of the technical fees services, ideally, and that's very, very important to the committee, that they get that work underway. One of the ways of approaching it is to agree on a methodology for evaluating the fees. These are fees that are constructed, traditionally, through the Ontario Medical Association process. They have an evaluation form. I think it's 25 or 30 pages. They actually look at the inputs in coming up with a technical fee rate. They look at the cost of the equipment, the cost of paying the technician, the supplies. So I think one of the early deliverables of that committee would be to establish that process, look at all the fees and start recommending how those fees should be changed. It's not only that fees should go up; they may go down. So that is what they would look at.

Then there are broader activities they would also be undertaking: looking at underserved areas, looking where there are distributions problems; looking where there are efficiencies. Again, that's why we said we have to work collectively: How are hospitals and independent health facilities exchanging information, patients and that type of thing?

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**Mrs. Munro:** Would the work also then include some comparisons, particularly when you're looking at underserved, of how you address distance issues, and also the differences in terms of demand for these services? I can imagine that there are going to be those kinds of differences, just simply based on the geography. What kind of rationale are you using or would you want to project in terms of balancing off those kinds of issues, of creating efficiencies but obviously in situations where you don't really have a tremendous critical mass?

**Ms. Rappolt:** I'll just offer some high-level comments. This committee, which is a multipartite committee, is charged with getting to the right methodology, getting to the right formula to ensure that all the factors that should

be taken into consideration, such as those you've raised, are appropriate.

I would say the overriding principles for the government in coming up with the right formula would be a formula that appropriately balances and ensures quality with access and efficiency, and takes into consideration, of course, access in terms of the remoteness of some Ontarians in needing these services. That is a core task of this committee, to establish the right methodology, meeting those principles.

**Mrs. Munro:** Would you anticipate that there should be more independent health facilities or fewer?

**Ms. Rappolt:** I don't believe we can sit here and make that anticipation. We would need to make that determination and offer advice to government as a result of getting the information and data that this committee will be providing.

**Mrs. Munro:** Just on that, when you raise the issue, when you talk about the memorandum of agreement that was signed in 2003 and then list for us the initial focus of this group, when do you think you're going to have some answers?

**Ms. Fitzpatrick:** I think the three organizations are ready to proceed to set up that committee, I would say, hopefully, within the next month or so. The representatives are being nominated at this point. I would say that within the fiscal year there would be preliminary work back.

**Mrs. Munro:** Do they have an incentive to act expeditiously on this project?

**Ms. Fitzpatrick:** I think they do. Although this will be a new iteration of a committee, there has been significant work. I imagine the representatives will be people who have been previously involved. They are people who are working in the communities that are dealing with these issues every day. I think they're very impassioned and they want to see change. They really are very committed to it.

**The Chair:** Can I ask a supplementary here? One of the problems I have is that we don't seem to have data on who owns these independent health facilities and who benefits in the end. In terms of the 1,000 independent health facilities, how many are owned or have beneficial ownership in the hands of physicians themselves?

**Ms. Rappolt:** What I do know is there is a broad range of arrangement, of corporate structures, that make up these 1,000 independent health facilities. I'm going to ask that Jeff give a more detailed breakdown on that.

**Mr. Jeff Morgenstern:** The ownership structure of independent health facilities: Sole proprietors, corporate entities, publicly traded corporations and partnerships are all eligible to be licensees of the independent health facilities. We track details as to who the shareholders of the corporations are. The difficulty in identifying which are physician-based is that in many cases the shareholder in the corporation could be the spouse or child of the physician, or the shares could be held in trust through a foundation. So it's difficult to identify the actual number that are physician-based or physician-owned.

All of the facilities prior to licensing in 1990 were structured—the billing arrangements were through radiologists or physicians billing the services through to OHIP. Then, when the change was made to the schedule of benefits to delist the technical fee, to create an IHF licensing situation we licensed the structure that was actually the owner of the equipment and the person who hired the staff. That wasn't necessarily the physician who was billing; it could have been a corporation under their control. But it's difficult to actually identify the percentage that are held by physicians.

**The Chair:** Can we ask each one of these independent health facilities—do we have the power to ask them?—what the interests of physicians are in these particular facilities?

**Mr. Morgenstern:** We have the power to ask that. We do know the corporate shareholding of the facilities, so we know to a shareholder level who holds the shares in the corporations. But we do not know whether that individual who's a shareholder is a physician or not. We don't keep track of the professional capacity of the shareholder.

**The Chair:** I'm asking these questions because we're doing negotiations with the college of physicians. The OMA are involved in some of these negotiations. It seems to me that there could be self-interest in terms of where those negotiations go. We're in such a crunch on health care costs. It just strikes me that there doesn't seem to be a huge urgency to deal with accountability mechanisms in this regard. As Ms. Munro has said, in 1996 we were supposed to set this committee up. We're still talking about setting this committee up.

Would it make sense for Management Board to take over this function of the Ministry of Health? It seems to me that it's a financial matter, and you're put in a bit of a conundrum because you're negotiating with regard to other matters. Would they have cleaner hands and more ability to bring this thing to a conclusion?

**Ms. Rappolt:** Mr. Chair, if I may, I understand exactly your point about the critical nature of accountability on this, for many reasons: access, cost and so on. May I suggest that we take that suggestion under consideration. The model that is struck does engage the OMA and the OHA. My sense is that those parties are critical partners in this exercise, but I understand your point to be: Would the government benefit from having, in addition to the Ministry of Health, some other leaders partnering in this discussion or negotiation? If we may take that under consideration, I'd appreciate it.

**The Chair:** Perhaps the committee will have some comments on it as well. I'm not saying to partner; I'm saying to lead it. I mean somebody else outside of your ministry to lead it.

You mention that there's a whole host of services. There are 1,000 independent health facilities, and this project could be a long project when you consider all the services that are involved and all of that. Why would you not pursue the most expensive, the most-used service; deal with one at a time and not consider this as a whole

basket; that you consider each independent health facility or each service that is provided by a particular type of independent health facility and deal with one problem at a time, particularly those that are costing and continuing to increase in cost very rapidly in the province?

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**Ms. Fitzpatrick:** I think that's exactly what we have done in the past. The two that come to mind that were dealt with as a high priority were sleep studies and bone density testing. Those fees and the model for payments have changed over this period of time. The sleep study services were part of the physicians' schedule not required to be performed under an independent health facility. They can be performed now in an independent health facility or a hospital. So that was one measure that was taken. We've also tightened down the requirements on bone density testing, which is also part of the independent health facility services.

**The Chair:** Would it help you if the committee came forward with a recommendation that you bring back a completed set of negotiations within a period of time? Basically, I think your problem is that you get tremendous pushback from some of the people involved. As a member of this committee, I am quite willing to take the responsibility for you and have you tell your negotiating partners that a committee of the Legislature wants an answer.

**Ms. Rappolt:** My sense is that would be a helpful measure. Obviously, we'll have to see what kind of success we can lever with the parties to meet the target that is set, but I can't help but think that's a useful thing. In a results-oriented world, having a target to work to should be beneficial to everyone.

**The Chair:** It would be useful for us, then, to have some kind of idea as to the schedule in terms of which ones are part of your priority list.

**Mr. Richard Patten (Ottawa Centre):** Just building on your comments, Chair, it would be similar to talking to the Toronto police department and saying, "We're anxious to work with you to review the quality of services." Of course the chief can't say no, but he probably wouldn't be too keen on the idea. So here we are talking to the association that represents medical business people who have a responsibility for their union, and we've got this very nice memo of understanding with them, I gather, to set up this technical committee to take a look at the situation.

I think we should take a harder line. Either we say, "To hell with it, we're going to do this anyway. We're paying the fees. We'll set up our own if we can't get this thing moving." It's now been nine years since this was identified by the auditor, and it seems to me that either we're serious about it or something isn't being clarified in an honest fashion.

**Ms. Rappolt:** I appreciate those remarks. It is a long time. It was something that was worked on through the negotiation process with the OMA, and the success was achieved in the spring of 2003, so I certainly take your point.

As to the recommendation of the Chair to ensure that there's a target we're working toward, with an opportunity for us to come back perhaps and set out a sense of what's a priority and the timing associated with certain priorities, I think we would appreciate that.

**Mr. Peter Fonseca (Mississauga East):** I have a question, Chair. This goes to the growth rate of the independent health facilities. We heard that it was between 8% and 10%, but there are certain services like ultrasound, up 60%, and sleep disorder clinics, up 135%. Back to some of the comments that the Chair made, how are we reassured that there isn't unnecessary testing going on or a redundancy within the system that's costing all of us, and are we getting value for money?

I know there were questions in terms of if somebody were to own an independent health facility—let's take a situation like a sleep disorder clinic—and also have ownership over the products and services that come after that diagnostic—selling of the masks, the oxygen tanks etc.—would that not be a conflict of interest in a situation like that? And are those types of conflicts taken care of right now in the system or not? I'm talking about somebody who would do the diagnostic and then further provide products and services to the individual down the line.

**Ms. Barnes:** The majority of the licensed services are referred services. Most of the diagnostic services are referred to the clinics by other doctors, not the doctor who would benefit from the service provision itself. By and large, that's the vast majority.

With respect to the other conflict-of-interest provisions, the College of Physicians and Surgeons has fairly specific guidelines with respect to self-referral and the conduct of its members in terms of benefiting from that. That's not covered by the legislation itself, but it's covered by another piece of legislation. I'm sure counsel here could provide a bit more on that at another time, if you want.

**Ms. Rappolt:** Was there anything else you wanted to add, Jeff?

**Mr. Morgenstern:** No.

**Mr. Fonseca:** How will this whole strategy work in terms of the local health integration networks? Will the independent health facilities find their way into the LHINs and how were they part of the LHINs?

**Ms. Rappolt:** As everyone knows, there's much planning and some good excitement out there regarding the implementation of our new local health integration networks, which is on the horizon. The networks will have a significant mandate to plan for and help integrate services within a local geography. Obviously they'll be working with a range of partners.

With regard to those services that are related to our hospital insurance program, I think the planning will be mindful of those services. But the hospital insurance programs are ones that likely won't be the first programs that will be directly managed or overseen in any way by our local health integration networks. They'll certainly be charged to work in partnership with the hospital system

and the physician community to ensure the appropriate planning for diagnostic services, but I don't believe we foresee any early change in oversight of the integrated health facility program.

**Mrs. Munro:** I'm interested in following up on Mr. Fonseca's question with regard to the LHINs. You mention the planning and the integration. I want to know what that really means. Does that mean there's going to be a computerized patient network that means somebody is actually going to be put into a plan, like a medical response appropriate to whatever their issue is? Is that going to be centrally organized through a LHIN? If a patient walks in a door and we know who this person is, have their OHIP card etc., where does the LHIN fit in for that person who walks in a door?

**Ms. Rappolt:** It's an excellent question for which there likely isn't an absolutely definitive answer yet, so I'm going to be very honest in that regard.

I think what you're talking about, which is integrated services to get better access for patients in their community, is the goal. I believe that the government truly sees in its vision better-connected information management and technology that would facilitate the appropriate tracking of that patient's needs across various elements of our system. That is our goal. The detail around how and when and through what phasing that will materialize at a local level is a very big question, and one that is being thought about as part of our overall electronic health strategy, but also, as you say, in relation to our consideration of the local mandate at the LHIN level versus the provincial mandate.

I want to say that all these things are under consideration. There is a great deal of ongoing planning regarding the implementation of our new network strategy, and this is a very critical element.

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**Mrs. Munro:** Can I just ask, how would it differ from what is currently available in terms of the coordination, for instance, between hospitals and CCACs? How would it be different?

**Ms. Rappolt:** I'm happy to answer the question. Mr. Chair, you'll let us know when we feel the questions are—how they will relate directly to the results of the Auditor General that are on hand today. I think what our vision will deliver is a focal point, a community leadership focal point, where, for the first time, there'll be a structure and leadership at the local level which will be charged with ensuring that the providers that we know are out there are doing their best to work together. But there'll be an entity there which is charged with that sole purpose, to ensure the right protocols, the right access points, that barriers are removed, so that Ontario patients don't face some of the hurdles they currently do in receiving integrated care in their communities and in their regional areas.

**The Chair:** I have a question with regard to the DSCs. The DSC, as it's now envisioned, is going to look at the costs of the services, the value of the services in terms of both the changing technology, which may have occurred

over a long period of time, and also in terms of volume and those kinds of things, in particular to the IHFs. As well, according to your statement on page 7, the DSCs are envisaged to look at the needs of particular communities and the sharing of the services. So there are two functions that you view for the DSC: Is that correct?

**Ms. Rappolt:** I believe that is the case, yes.

**The Chair:** OK. With regard to the need for additional cataract surgery—I don't know whether you asked this, Mr. Mauro, or not—there was an RFP, or there is an RFP, to look at what additional services are needed in that area?

**Ms. Rappolt:** As part of the government's wait-time strategy to expand cataract services, the government most recently announced the expansion of 2,000 services already this year, and the intention is to achieve 9,000 new services throughout 2005-06.

**The Chair:** But in terms of the distribution of those additional services and the services we have, how are you establishing where they are most needed?

**Ms. Rappolt:** My understanding is that, as part of our wait-time strategy work, which is overseen by Dr. Hudson reporting within the ministry, there is a needs assessment process ongoing that is trying again to look at the principles of quality, access and efficiency. That process is going to assist in determining the right kind of delivery model for cataract services for the province.

**The Chair:** I guess I was referring to page 223 of the auditor's report, where it says you have "conducted a needs assessment to identify areas ... in greatest need for additional cataract surgery" and that you were seeking approval for RFPs for approval. I was asking you where that status was.

**Ms. Rappolt:** I believe it is the case that certainly the government with its wait time strategy will consider which locations are the appropriate locations—hospital-based, IHF-based—for expansion of cataract, and that work is ongoing right now.

**The Chair:** In terms of either an independent health facility or a hospital undertaking a diagnostic procedure, what kind of reporting do we demand back from both of those kinds of providers of service in terms of what they're doing with their equipment, their resources, and whether they're getting positive or negative results? In other words, in order for us to go forward and share the services we already have more equitably and make certain they're applied to the people who are most in need, my concern is that we don't have the information to make those kinds of decisions.

**Ms. Rappolt:** Mr. Chair, I understand your point. I think the government has understood the importance of ensuring access to the right data to build the right strategy. I'll comment just for a minute on Dr. Hudson's work and the fact that a critical element of that work is receiving the kind of inputs you're talking about regarding existing services—volumes, cost and so on—in order to build the plan to ensure that we are enhancing services in the appropriate way in the appropriate place. That is a critical element of his mandate. It's very active work right now.

With regard to diagnostic or surgical procedures in the IHF facility, Jeff, do you just want to comment on the response to the Chair's question on sort of quality assurance or follow-up regarding surgical procedures in the IHF venue?

**Mr. Morgenstern:** For diagnostic and surgical procedures performed in the IHF, the quality of care is ensured through a quality assurance mechanism where we contract with the College of Physicians and Surgeons to do on-site inspections of the facility. The ongoing status of the licence is dependent upon maintaining good-quality care and maintaining the appropriate equipment within the facility. Failure to do that—and if we get a report that there are deficiencies within the clinic, we can take licensing action to suspend the IHF licence until they make corrective action, and then we'll reinstate the licence.

**The Chair:** How many licences have you suspended in the last year?

**Mr. Morgenstern:** It's routinely around 10 to 15 licences, where there are deficiencies of a severe enough nature that result in a suspension of the licence. In all cases in the last year, the ones that were suspended took corrective action and have since been reinstated.

**The Chair:** Does that become public information as to who's been suspended?

**Mr. Morgenstern:** We don't report publicly the details. That's one of the recommendations within the audit report, that we consider a process for publicly reporting the results of the assessment.

**The Chair:** Is it FOI-able?

**Mr. Morgenstern:** There is an FOI case that has gone to appeal on that issue. At this point, I don't believe that's resolved.

**The Chair:** When is the decision expected on that?

**Mr. Morgenstern:** I'm not really sure on that.

**Ms. Rappolt:** We could get back to you with that information, Chair. I do understand this is one of the critical recommendations brought forward regarding disclosure of compliance behaviour, so it's something we've got to take into consideration.

**Ms. Laurel C. Broten (Etobicoke–Lakeshore):** I want to pick up on a couple of issues that have already been discussed. On the wait time strategy, I had the privilege to attend with the minister when the wait time strategy was announced in my local hospital, Trillium Health Centre. I have to say that I was very shocked when I learned of the real lack of information that did exist in the province prior to a decision being made that we absolutely needed to get a handle on what these waiting lists were.

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You made mention, Madam Deputy Minister, about the need to make decisions based on that information. The question one must pose then is, on what information were decisions being made before? Since we didn't have this information, how were good decisions, or likely not good decisions, being made and what criteria were being examined if there was no information available?

**Ms. Rappolt:** I appreciate that question. I'd like to begin the answer and then I will introduce a colleague to my right, Rachel Solomon, who is a project leader with Dr. Hudson's wait time strategy.

I'll begin by saying that it's not the case that funding allocations to hospitals were made in the past with no consideration of the need for placement and capacity for critical surgical procedures, such as cataract. But I think it is fair to say that these decisions were made likely in the context of looking more narrowly at data on an individual hospital basis—maybe hospitals within a region but not with the capacity to step back and look at the needs of a system or a broader geography. That's the approach and the tremendous value that our wait time strategy and Dr. Hudson's approach are bringing to this.

I'll just ask if Rachel wants to comment any further on the details behind that planning.

**Ms. Rachel Solomon:** In the past, estimations of geographic demand have been done on an individual hospital basis or on current rates of surgery per population and estimates of population growth in those areas. The work that the wait time strategy is doing in terms of getting a comprehensive wait time registry for the province will add to that as being able to look at both rates of population and population growth within a geographic region, such as the LHIN, as well as the wait times within those LHINs. Combining that information will give us the information we need to plan better.

I would say also that while there is a dearth of information on most of the services under the wait time strategy, we do currently have good wait time information on cardiac surgery and other cardiac services. So it's a bit of a mismatch. There are some services for which we have good data, some very limited and we hope to bring that all up to par.

**Ms. Broten:** OK. The other question I wanted to just go back to was coming directly out of your early statement, Madam Deputy Minister, about the "creation of new independent health facilities" and the requirement that "the minister authorize the issuance of a request for proposals." You go through how the system is now, as I understand it. Is this a new change or is this always the way it has been? What improvements have been made to respond to the criticism of the auditor?

**Ms. Rappolt:** I think our historical expert, Marsha, is someone I'll call on to answer this.

**Ms. Barnes:** I'm not quite sure which auditor recommendation you're referring to, but with respect to the request for proposals process, it's more or less the same as was set out in the legislation when it was proclaimed in 1990. It's only been used in a few number of instances, such as for the dialysis proposals, and then the MRI/CT most recently. The process in all instances was the same in terms of following government procurement guidelines and doing a competitive process. There has been a more recent amendment that allowed for a directed RFP during the time of restructuring to allow the minister to request a proposal from a specific individual facility and that has been used in two instances.

One was in the instance where a hospital was previously providing the services and did not want to continue in that way, and in order to maintain the services in that community there was a directed RFP to a group that was willing to take that on: the physicians who were providing the service.

In one more recent instance that Jeff is more familiar with than I am because it happened since I've left, there was a directed RFP where a facility operator no longer wanted to provide a service in a small community and, again, a group of physicians was willing to take on that responsibility and to maintain the service in that community.

**Ms. Broten:** Was a change required in the legislation to allow the directed to RFP?

**Ms. Barnes:** Yes.

**Ms. Broten:** When did that happen?

**Ms. Barnes:** That happened at the time of Bill 26, which was—

**Mr. Morgenstern:** In 1996, the Savings and Restructuring Act.

**Ms. Broten:** What are the dates of the times that that new change has been used? It's only been used on two occasions, you've indicated?

**Ms. Barnes:** That's correct.

**Ms. Broten:** When was that?

**Ms. Barnes:** The most recent one, Jeff, was within the last—

**Mr. Morgenstern:** The most recent one was October or November of last year when the RFP was issued. Prior to that, it was 1999 for the situation of the hospital closure.

**Ms. Broten:** Where was the 1999?

**Mr. Morgenstern:** Burlington.

**Ms. Broten:** You indicated that the dialysis, MRI and CTs have gone through the RFP process. What other process, then, is a process that issuance of other independent health facility licences are provided, if it's not through an RFP process?

**Ms. Barnes:** The other one is, if there's a change in the schedule of benefits, it brings the services under the ambit of the act. That was used in the instance of sleep studies that Ms. Fitzpatrick mentioned earlier, to designate the services, one that required licensing under the Independent Health Facilities Act.

**Ms. Broten:** OK. Thank you.

**The Chair:** Can I ask some questions about the wait list?

**Ms. Rappolt:** Yes. I'll ask Rachel Solomon to return.

**The Chair:** I want to convey to you a story that a constituent told me of going for a CT scan at the Ottawa Hospital, at the Riverside campus. He showed up at 8 o'clock in the morning. This was fairly recently, probably last fall. There were three people in the waiting room at 8 o'clock. He was the third to have his CT scan. He said he finished around 8:20 or 8:25. He came out into the waiting room and nobody was in the waiting room. He asked the administrator or whoever it was running the particular clinic, "It's funny. I mean people

are lined up for CAT scans. How come there's nobody in the waiting room? When's your next appointment?" She said, "Around 10:20." He said, "Why's that?" She said, "Well, everybody else has cancelled."

I guess my concern in us talking about waiting times and waiting lists is how we are putting the heat on institutions like the Ottawa Hospital to readjust their lists and make certain that more people get in between 8:25 and 10:20 and that we provide the services and don't have people standing around doing nothing. Are we asking those questions of the providers of these diagnostic services, questions like how many cancellations there are? As I understand it, with MRIs, only about 35% of those ordered are actually done. Are these 60% of the time cancelled appointments and nobody showing up? We have to know that. We have to drive this system so that in fact if we have the capacity, the waiting times will become less.

The other question to you is, when you're developing these waiting lists and when you're developing the tracking of the system, do we know how many tests actually result in positive responses, or are we doing a lot of tests to comfort people when in fact there may be other diagnostic tools which are less expensive and less time-consuming that should be used?

**Ms. Solomon:** We actually think those are the most important questions under the wait time strategy, and while increasing volumes and capacity is very important, one of the big foci of the wait-time strategy has been and will continue to be efficiency, especially in the next year or so. We're working with hospitals to find out: Are they cancelling procedures because a physician doesn't show up on time? Are they failing to remind patients to come to appointments? Of the hours that you're operating, are you doing the number of procedures, surgical or diagnostic, that you should be? We're working on all those things. We actually have a working group looking at surgical process efficiency as well as diagnostic efficiency. So these are the very questions that we think are the most important.

**1050**

With respect to your comment about whether the procedures being done are appropriate and whether we know the outcomes, right now we don't. We have asked the Institute for Clinical Evaluative Sciences, ICES, to develop an access index that would look at the issue of access comprehensively; not just wait times, but also outcomes and what's appropriate and what's not.

**The Chair:** How long is that going to take to do?

**Ms. Solomon:** The first bit of work from ICES, which will be establishing our baseline of wait-time data—because we don't have a baseline—will be completed this spring. As to getting the piece on appropriateness and outcomes, I don't want to give a precise date, because I'm not entirely sure, but in the following year.

**The Chair:** Maybe it seems too simple to me, but I could think up probably in a week the reporting mechanisms that I'd like from my hospitals and my independent health facilities about how often the CT scanner is down.

**Ms. Solomon:** We have gathered that data in the last couple of months via survey, and that's part of what the recommendations will be based on.

**The Chair:** Is that published information?

**Ms. Solomon:** No.

**The Chair:** Why not?

**Ms. Solomon:** We've just collected it. We have to validate it.

**The Chair:** But if I asked you how busy the Ottawa Hospital's CT scanner was, could you provide that to me?

**Ms. Solomon:** I would have to go back and check that the data has been validated.

**The Chair:** OK. I guess what I'm saying is, I think the only way to bring these people into line is to publish this information so that when the public come and talk to us, it makes the hospitals start to seek efficiencies. Why do we need to wait much longer? You've got the information. Why don't we just put it on a Web site?

**Ms. Rappolt:** Mr. Chair, I'll just confirm that your objective is our objective. That's exactly it. I know you're pressing about time. My observation is—and Rachel will know this better than me—if there's someone who can press the Ministry of Health and that big, complex health system out there on driving toward results on this topic, it is likely Dr. Alan Hudson. I know it does sound like an overly complex process of involving ICES and developing the methodology and so on. I feel reassured. I really believe it is an aggressive plan, and it is absolutely the intention to be able to publish and make transparent this information for Ontarians.

**Mr. Fonseca:** Just a question about that, going on the Chair's questioning around the wait-time strategy: Would certain things come on-line before others? Would somebody waiting for an MRI be able to look at where they are in the queue, and if they are willing to drive two hours to a different MRI facility, would they be able to get that MRI at some other facility, because their list is a lot shorter? Could you just take us through how that would work?

**Ms. Solomon:** Once we have a fully comprehensive wait-time registry, the purpose of it is that it would be public. One of the objectives would be that when a family doctor is referring a patient for an MRI or for surgery, they could collectively look at giving the patient the choice. If there's a wait time that's much shorter two hours from here or if they want to wait for a particular surgeon or a local hospital, if they want to make the choice and travel, that would be open to them.

**Mr. Fonseca:** And that is not available at this time?

**Ms. Solomon:** No.

**Mr. Fonseca:** That is something we're working toward?

**Ms. Solomon:** Yes.

**Mr. Fonseca:** I brought up the MRI just because that's at the top of my mind, but would other services, other diagnostic work, also have that capability, where they can decide to travel a distance?

**Ms. Solomon:** The initial focus in terms of the information system under wait times includes MRI, CT,

cataract, cardiac and cancer surgery, as well as hip, knee and total joint replacement. That's our initial focus, but the system will be built with the capability to expand in the future.

**Mr. Fonseca:** With the wait-time strategy, are we working toward a reasonable wait time? Do we know what a reasonable wait time is for these different procedures?

**Ms. Solomon:** We don't, and that's one of the things we're working on. It's also part of the federal commitment, so we're working with the other provinces.

**Mr. Fonseca:** So none of this information was available until this work that is being done at this time?

**Ms. Rappolt:** It is correct that Ontario is a jurisdiction where the wait-time strategy and transparency to Ontarians on their access and waits for services wasn't in the same spot as many of the other jurisdictions in the country. This is information, this is a result that Ontarians will have in the very near future that other Canadians have had access to, which I think we'll very much welcome.

**The Chair:** Can I ask a question? In terms of the inspection of the independent health facilities, is there any body other than the College of Physicians and Surgeons that could do this job?

**Ms. Rappolt:** I'm glad Marsha came back because I think she should deal with this question. When you say "this job," what you're looking at I think is the oversight or accountability of the corporations, of the entities.

**The Chair:** Or whether they live up to the act in terms of what they're doing: Is it healthy for our people to go into this particular clinic or facility?

**Ms. Rappolt:** In terms of the nature of services provided by the physician, obviously their own college does have an ongoing role in looking at any issue with respect to the service. With regard to the oversight of the IHF legislation and the role of the physician, I'm going to turn to Marsha.

**Ms. Barnes:** The Independent Health Facilities Act is very specific in that the College of Physicians and Surgeons is to be the body that would go in and do the assessments on behalf of the ministry. So to change that, there would need to be a change in the legislation.

**The Chair:** Perhaps the auditor wanted to follow up on that.

**Mr. Jim McCarter:** Just to follow up on that, how do you find the relationship with the college? I know in 1996 the act was changed. You could go in and do unannounced inspections, and that hasn't been done as yet. I noticed your comment saying, "We've initiated comments." When you go to the college and say, "We'd like to start this up," do you find the college is very receptive in the sense that, "This is a great idea, Minister. We're going to get this in place right away"? Or do you find that there's some resistance to something like that? What would the time frame be of getting that up and underway?

**Mr. Morgenstern:** On the unannounced visits this year, they were very receptive to that, because I believe they recognize the potential of problems in facilities.

With a scheduled date of inspection, you could correct it for that one day, and I think they recognize that that's a potential for problems. When we met with them in December to discuss this, they were very receptive to the plan.

**Mrs. Munro:** Actually, that's exactly where I wanted to go with a question on the unannounced assessments. As it seemed that that had been recommended some time ago and yet they hadn't started, and in your comments you said you expected some completion either this year or next, I took it that there was some reluctance, obviously, to take these on. I think it's important for us to understand the position in terms of the speed with which this hasn't been happening.

Secondly, I wondered, does it have anything to do with the complexity that would accompany any kind of assessment? I just wondered if that was an issue around the whole business of the reluctance and the slowness with unannounced assessment.

**Mr. Morgenstern:** There were a lot of issues around unannounced assessments, because one of the concerns was that we were sending in an assessment team to review, and that generally involves a physician and a medical radiation technologist in a diagnostic facility. In many cases, they're travelling quite a distance; it could be anywhere in the province. You don't want the assessment team to show up at the door unannounced and find it's closed that day or that they don't have any scheduled patients that day.

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So there are issues around how this unannounced assessment is going to work and to make sure that it's going to work effectively and that you're going to be able to go in and assess the facility. Ideally, when they go in and assess, there are actually patients being seen at the time of the assessment; that's part of the assessment process. It's easy to do that with an announced assessment, because you can ensure that the facility operator schedules a patient on that day and you can observe that patient being seen. So there are still issues around how it's going to work, and we have to make sure that it's going to be done effectively.

I think the delays were more around other priorities within the assessment process—getting the assessment reports in order, getting the structure back and forth between the college and the ministry on how we did our business—and those were the delays in not proceeding with unannounced assessments. We now are in a position where we think we can sit down and develop a procedure for doing it that will be effective and implement it fairly quickly.

**Mrs. Munro:** On a related issue, there was the question of those who have to respond to some of the issues that are raised. I'm not sure, in all this paper, exactly where it is, but it talks about the potential to assess a fee if you have to go back, so that this would be self-supporting. I just wondered where that stands in terms of the thinking on moving in that direction.

**Mr. Morgenstern:** Implementing charges for reassessment would require a regulation change under the act, and it would likely involve maybe six to 10 facilities a year where we would go back and reassess and charge for a reassessment based on their not taking corrective action in a timely fashion. So, it's a question of priority because it's dealing with a small number of facilities—only six to 10. The cost recovery associated with it is not large. There is a certain amount of administrative work in preparing the proposal and getting it through regulations and proceeding to implement, for a fairly small return. To do it would be more an incentive for facility operators to take that corrective action, knowing that there was a financial penalty for not proceeding. So it's not really the amount of money that the ministry is going to collect in reassessment fees; it's an incentive for them to proceed with the corrections that we want them to do. So for that reason, we're viewing it as a positive step, but it still requires a regulation change to implement.

**Mrs. Munro:** I appreciate knowing that information. How often would an independent health facility expect to be assessed?

**Mr. Morgenstern:** They're on a schedule that they will be assessed once each during their five-year licence term. There are 1,000 facilities. We do approximately 200 assessments per year.

**Mrs. Munro:** I appreciate your comments earlier about whether the day happens not to be a good one in the sense of patients being there and so on and so forth, but obviously people recognize the fact that they're going to be assessed. A lot of the things that would make up that assessment would be there on an ongoing basis, regardless of the day on which you happen to visit.

I wanted to ask a question with regard to the kind of work that is being done on the wait times, and it's really a simple one that perhaps we don't have to ask you to get up and come over for. It was my understanding that one of the things that was done under the auspices of Cancer Care Ontario was to try to collect data and be able to provide opportunity for a greater coordination between facilities and patients. If I'm correct, is that a model for what you would be using in looking at wait times in other medical procedures?

**Ms. Rappolt:** I can answer that at a general level and suggest that, given Dr. Hudson's relationship with Cancer Care Ontario, it wouldn't be a surprise, I don't think, that the foundational work at Cancer Care is a model.

As Rachel mentioned earlier, there are other good practices regarding wait time planning in some areas of care. Cardiac is an area where the province has a relative foundation as well, so I would say: Absolutely, yes, some of the progress made in the cancer venue is progress that they're moving forward from, but also using some of the best practices from other areas.

**The Chair:** Can I ask you a question about unlicensed health facilities that are providing diagnostic care? I'm talking about another constituent of mine who went through a healthy pregnancy and had a healthy baby, but every time she went to the obstetrician, she was given an ultrasound. Not that she requested it, but it was suggested

to her by the obstetrician to have it. It was done in her office.

What would the obstetrician get paid for that particular service? I presume, because it would be an unlicensed facility, that there wouldn't be a technical fee, but there would be a fee that the obstetrician would gain from giving that particular test.

**Ms. Rappolt:** Jeff, do you want to go with that? Susan may supplement.

**Mr. Morgenstern:** On the first part, it's possible that the facility with that obstetrician is a licensed facility, because many obstetricians are licensed to perform obstetrical ultrasound as a component of their obstetrical care practice. It is possible that the facility is licensed and would be billing both the professional and technical fee associated with the service. There are limits on payments for obstetrical ultrasounds. Perhaps Susan could comment on that.

**Ms. Fitzpatrick:** Yes. I was going to say that if it is unlicensed, then the obstetrician would be able to bill the professional component of the fee, which is for the interpretation of the ultrasound. On pregnancy ultrasounds, I think the limit is two per pregnancy—there's a third, I think, in the early stages—so there is a limit on how often OHIP will pay for it.

**The Chair:** So the physician fee or the technical fee has a limit on it, or both?

**Ms. Fitzpatrick:** Both of them.

**The Chair:** OK. Do you have a question, Bill?

**Mr. Mauro:** I do. Actually, Mrs. Munro touched on the question, the last one I wanted to ask, and that is about cancer care. About two and a half years ago, a process began under the previous administration of taking the six or eight—I'll call them satellite cancer care facilities—that existed under Cancer Care Ontario and rolling them into the hospital structure.

A lot of people were very surprised and did not understand why the government of the day would undertake that initiative, given that, from all the information I have, that program was functioning incredibly well. At least, I can speak to the one in my home municipality, where it was a bit of a shining light as far as health care provision went. People were very concerned about it, insofar as they saw the budgets being rolled together—and that they might be diminished on the cancer side and used to prop up the hospital side and that sort of thing. Nobody really understood why it was happening.

We've talked a lot today about Dr. Alan Hudson; he was in charge of Cancer Care Ontario at the time. While we're talking about waiting times, I guess my question would be, is it not easier for us to track waiting times on specific procedures when they are actually in a stand-alone capacity, like Cancer Care Ontario was before, than it would be when they are rolled into the hospital sector or a larger conglomeration of service provision? Is it not easier? Is that an example of something that would have made it easier for us to track waiting times?

**Ms. Rappolt:** I think I understand your question. My colleagues and I likely don't have at the table right now

deep expertise regarding cancer services and all the details around the integration.

**Mr. Mauro:** It's less about cancer; that's as an example. 1110

**Ms. Rappolt:** Right I just want to suggest that none of us here are experts. But I do understand your question, which is, might it not have been easier with a free-standing or satellite model to be capturing the data we need and ensuring that we get the right methodology?

**Mr. Mauro:** Yes.

**Ms. Rappolt:** My observation would be this: The provision of appropriate services to patients in Ontario requires such a degree of integration and seamlessness in access points that ensuring that the model we're using to collect the data and then use the data to inform decisions—that model has to be a model that can be and is applied across all the access points of service. So I would feel fairly strongly that it would be critical that the hospital setting, the free-standing setting and the clinic setting all have to be users of the same approach.

**Mr. Mauro:** Well, I'm not suggesting that they were using a different approach. I don't know that the approach or data collection or methodology changed once they were rolled into the hospital sector. I guess it would just seem to me that it would be easier to track when they were stand-alone. I guess I'm interpreting your answer to be that you don't think it changed anything.

**Ms. Rappolt:** I want to say that I understand, I hear your points about the reaction at a local level, a community level, regarding an integration such as this—

**Mr. Mauro:** It's not about that.

**Ms. Rappolt:** —but I want to say to you, I don't think that it would or should be an additional barrier.

**Mr. Mauro:** OK. We talked earlier about cataracts and that we think there's going to be a larger provision of cataracts. I think that the Chair raised it a little bit earlier. If that was going to be in a stand-alone facility, wouldn't it be easier to track the success of their ability to provide the service and to track those wait times that way than—

**Ms. Fitzpatrick:** I am somewhat involved with the wait time strategy. No matter where the services are provided, they're going to have to provide the same information. The hospitals and the independent health facilities will have to report. So I don't see it as a more difficult task.

**The Chair:** Mr. Levac?

**Mr. Dave Levac (Brant):** Thank you, Mr. Chairman. It will be a quick question, but I have a little bit of a preamble, first, to thank the Auditor General for his work in bringing focus to some of the things that you've accomplished. My compliments to you for dealing with it, because as I've heard your presentation and read it again, these are in progress and some of them have already been completed. My large "thank you" for that. You also answered, apparently, a question that I had earlier—I had to excuse myself; forgive me—about LHINs and the effect of LHINs in this. I do want to make sure that we get that part of the equation right. The

implementation of the LHIN will affect what the ministry does across the board when we start talking about regions etc.

That part of the preamble being said, going back to what Chair Sterling was talking about regarding the caps and certain procedures that are done: if you can reinforce what effect the response to the Auditor General would have or is already having on the concerns that get laid before us as the government, or specifically the ministry, to deal with duplication and to deal with unnecessary procedures inside of the specifics of this report. Because I know that the ministry is way more vast in its application. The independent part and how even the unlicensed part is getting addressed—I'd like you to reinforce how responding to the Auditor General is going to, in effect, provide us with that removal of the duplication and the concerns of caps and all of that kind of stuff. It's pretty generic, but it's an opportunity to reinforce what it is we're trying to accomplish.

**Ms. Rappolt:** I'll begin, and I think I might flip it then to Susan regarding the work on looking at volumes, price and fees, and that relationship. I would suggest that how the Auditor General's recommendations overall assist us in ensuring that we're continuing to improve access to care for Ontarians and reduce duplication—I think much of that is reflected in the conversation we've already had regarding the development of a really robust comprehensive wait strategy, for one.

It does also speak to the conversation we had more at the beginning of our session regarding the intended role of the diagnostic services committee. It has been noted and we acknowledge that the establishment of that committee has been taking a little long, but their work is intended to help ensure that we have the most effective approach to fee-setting reflecting community need and efficiency.

Susan, was there anything more you would want to elaborate on?

**Ms. Fitzpatrick:** Just in terms of the streamlining and the efficiency, and I think I did say that there has been committee work already done. There was a committee on technical fees and then a follow-up committee. They did do a lot of investigation and research.

One of the things the committee is very interested in is looking at transfers of patients between facilities or hospitals: how that happens and how they can streamline and make that the most efficient. One of the issues they've identified is that a patient may get multiple diagnostic tests for the same complaint because there isn't an efficient way of transferring that information. That is something they will look at quite early on. And they're not just looking at a systems way for doing that; it could be, in the short term, more of a manual process. So there is definitely a focus.

As I said, the people on the committee are people who are working in the sectors, and they see opportunity to try to generate some efficiencies and savings.

**Mr. Levac:** A quick supplementary, and that would be to ask the question, instead of using the word "assume," is it fair to predict that we don't have to wait for the

Auditor General to guide us through that process in the rest of the ministry to look for what you're trying to accomplish as a result of the Auditor General's report?

**Ms. Rappolt:** Yes, I think it is fair that you can predict. We are taking that approach across the ministry. I think that speaks to the ministry's and this government's acknowledgement of the need for very strong accountability between the ministry and the parties we work with to deliver services to Ontarians and on behalf of Ontarians. I think the ethic of ensuring good accountability, quality, efficiency—that approach is being taken to our oversight of all the services we oversee in the Ministry of Health and Long-Term Care.

**Mr. Levac:** No disrespect to the Auditor General intended, of course. Please don't misinterpret that, but that's a culture and that's what I was asking about. So I would probably give the Auditor General an opportunity to explain his purposes—not what I've been asking—in clarification.

**Mr. McCarter:** The other thing maybe I could just add too is, I don't know if you're aware, but two years after we make our recommendations, we actually go back to the ministry. We will be following up on each of our recommendations. We report on the status of the action taken on those recommendations two years later. So in our 2006 annual report, we'll be asking the ministry where they stand on these. And especially where they say they've made substantial progress, our staff does go in and we do check to make sure that that progress has been made or has not been made, and we report on that in the follow-up section of our annual report.

**Mr. Levac:** Thank you.

**Mr. Michael Prue (Beaches–East York):** I'd just like to go back to the unannounced assessments. I heard the rationale: You want to make sure that everything is proceeding and that there are going to be patients there. But let me put it in another way. When you go in unannounced, you're going to find things, I would suggest, that you may not find on an announced visit. As an example, you may find unlicensed people on an unannounced day, whereas, I assure you, when they know you're coming, you're going to have a licensee there. You might find health and safety violations which would be cleared up well in advance. I give you the example of health inspectors going into restaurants in the city of Toronto. They find the violations when they go unannounced, not when they go announced. Isn't this the same rationale? What you're doing is servicing the facility, not the public, when you take the procedure you do. Could you comment on that?

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**Mr. Morgenstern:** The rationale you mention is the exact reason we are looking at introducing the unannounced visit: the fear that an operator changes their way of doing business on the day of the assessment to make it look as though they're operating well. That's the very reason that there's a need for a policy on doing unannounced visits, but you have to develop a process that's going to make it work. It's easy to go into a restaurant and do a restaurant assessment. It may not be

as easy to go into an independent health facility on any day and do a complete assessment. A process is going to have to be built that allows for a full assessment to be done, even if there are patients who aren't there on the day of that visit. But I agree that we clearly want to go in, without giving them the opportunity of making corrections, to see how they do business on a day-to-day basis.

**Mr. Prue:** What is stopping you now? Businesses are generally open Monday through Friday. Businesses have regular business hours, which they post. I don't see the rationale you gave earlier, that you have to send somebody off to a far place and not necessarily see it. I could make a phone call to any one of these licensed facilities and ask them what their business hours are. That wouldn't trigger anything to them.

**Mr. Morgenstern:** We can ask them their business hours. Many facilities are licensed for multiple modalities. They're doing X-ray, ultrasound, nuclear medicine procedures, fluoroscopy. When the assessment team goes in, you want to be able to view all modalities in operation. It may be that they run ultrasound one day a week, X-ray another. It may be that when you enter the facility, you're not getting a complete picture of what they do in that facility if you go in unannounced.

There are still ways to make it work. We're doing file reviews, so we pull actual records that were done in the facility and assess the quality of the image for past records. You lose a component of it, that is, viewing patient interaction, if there happens to be no patients that day. But the process can still work. It's a matter of working out how that process is going to work with the college, getting the assessment teams trained so they know what to do when they go in on an unannounced visit and making sure we're going to get an assessment report that adequately explains the quality of services within the facility.

**Mr. Prue:** Maybe I'm naïve, but I don't understand. What kind of training would be required? I was in the civil service myself for 21 years. When you went in unannounced, you knew what your job was. What kind of training would these people have to have to go in unannounced that they don't already have? I don't understand that.

**Mr. Morgenstern:** The assessors undergo training now. The college has a training program for the assessors that involves the standard process of what they do when they go in. You have to train them in what they do if there's no ultrasound technician on site that day: If you're going into assess a radiography and ultrasound clinic, but there is no ultrasound tech, who do you talk to? What's the process you follow? It's procedural issues on how they conduct the assessment in situations that are not routine. When we announce the assessment, the facility operator is instructed to be there, so the licensee is there, all his staff are there, all his records are there. If you go in unannounced, the facility operator might say, "My records are at home," in which case the assessor would need to know what to do in that situation, which would probably be instructing the operator to—

**Mr. Prue:** Go home and get them.

**Mr. Morgenstern:** But you need the processes written out. You need a process for them to follow. It's going to be detailed training, but it's a variation on what they do now when they assess a facility.

**Mr. Patten:** You might surmise that this arrangement with the college is too cozy for me. I think there's too much self-interest built into the whole structure of the relationship. It is limited by their perceptions of services, by and large. At any of these independent health facilities, do you have any proactive health advice advisors, nutrition, fitness, exploration of lifestyle or anything of a preventive fashion?

**Mr. Morgenstern:** The facilities that we have licensed for diagnostic services are specific for those diagnostic tests and it doesn't include other types of counselling services. We would expect a family physician to be involved in that type of thing.

**Mr. Patten:** My bias, frankly—and I've spent a lot of time on this, as you might imagine—is that we are locked into a treatment model, and the health ministry is locked into an illness model, treating people who are sick after the fact, which of course we would all want to support. But I don't see any end to this.

I was in Ottawa a couple of weeks ago to present, on behalf of the government, a cheque—not a cheque, but an announcement of funding of \$11.4 million, something in that range. Part of the money was for the regional cancer centre. I have great respect for the doctor, by the way, who heads this up. It was directly related to a contribution to reduce waiting time, \$6.6 million, I believe it was. The doctor said, "Thank you very much. I'll take this as a down payment. It isn't really going to do all that much related to the situation, because cancer is growing at 7% a year and our population in the area is growing at 2%." I did a quick calculation, and in about seven and a half to eight years, their treatment list will double. We're trying to eat into 15% to 20% of their list as it is now, and we can't keep up. If it had been a cheque, I would have just grabbed it out of his hands and said, "You know what? I'm taking this back to give to the Premier and tell him that we'd better do something in terms of prevention."

Anyway, that is an oblique reference to my bias. I get really worried. That little experience scared me, because when I hear them say that at the end of the decade, one out of every two people is going to have cancer, that's an epidemic. If 10% of our population gets the flu, we call it an epidemic, but half our population having cancer is not. It's in our very structure to accept that right now. We're all experiencing this, in our families, our staff; I just had an experience this week. This is extremely, extremely worrisome.

My point is that this particular area is on the diagnostic side, and that can play a role somewhat in early detection and prevention. May I ask you if you see any signs of expanding other practitioners? More and more people are losing faith in our system and are going to other practitioners—naturopaths, Chinese medicine, acupuncture, vitamin and mineral therapists, whatever it is—and finding great success. So when I look at

independent health facilities, maybe we need to revisit the act, because it's too limited. I guess you can't respond that way, because that has to be done by the government, but do you have any hopeful signs in any of this as you look at what's being done? You must be asked this a lot, in terms of what some of the other ways are—not the only way. We're locked into this allopathic approach, and if it's so great, how come we're losing the battle on more and more cancer every year?

**Ms. Rappolt:** I thank you very much for the comments. I'll just say a few things. First of all, with regard to cancer, as you know, these matters affect all our lives and we all wish for the right kind of investment at the front end in order to avoid what we find to be very tragic outcomes. Cancer Care Ontario does play a pivotal role in early intervention, screening, and research and prevention. I just want to say, in the context of the investment the province makes in cancer, part of that context is very much focusing on prevention and very early intervention. In addition, within the ministry, our public health division, led by Dr. Sheela Basrur, takes very seriously its mandate regarding healthy living, which of course covers a range of domains, whether that be nutrition or breast screening programs etc.

I just want to say that we do need to look at health care as a system. We're all committed to moving out of a framework of illness care, and we need to make sure that our investments are balanced to treat those who need it but also invest in research and early intervention to keep people healthy.

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**Mr. Patten:** If I might just respond to that, I was at a meeting in Ottawa at the Ottawa Hospital when the Cancer Care executive came and presented their strategic plan. They talked about outcomes, and that there's step 1, step 2 and this kind of thing. The preventive side of things was detection and screening. I didn't see anything that went beyond that. It just moves very quickly into treatment. "We're going to do early detection if we can": That refers to when people think something's wrong, but it is not preventive, in my opinion. I think part of our problem is that the people who sit on our advisory groups are all doctors and they don't have training in this area. They don't have much training in nutrition. They get half a day, or at least they used to—maybe they get a day now, I don't know—and it's only if they have a personal interest. That's not to say that all doctors are not aware, because I know that many are. But it doesn't take place through background or the kind of training that's in the medical schools.

Anyway, I'll leave it there. There may be opportunities down the line to broaden all this.

**Mrs. Munro:** I just have a quick question. It relates to the information you provided in your remarks this morning about the ability under the act to develop criteria to evaluate proposals for expansion to include additional services. Actually, I think there's a connection between my question and the comments of Mr. Patten. I wanted to ask whether you are seeing any proposals or any pressures with regard to expanding independent health

services. Are people interested in providing different or augmented services through this approach?

**Ms. Rappolt:** I'm going to ask Marsha to respond.

**Ms. Barnes:** Yes, but there has always been interest expressed to us, particularly with respect to the opportunities presented to move services that traditionally had been hospital-based services into the community as the technology has advanced to make it safe to perform those services in the community. Things like colonoscopy and endoscopy come to mind, where there has been some interest expressed, largely by the providers, regarding an opportunity to move those services into the community.

**Mrs. Munro:** If you were evaluating those, I'm assuming you would be looking at whatever efficiencies might be addressed by doing that. Earlier, there were questions raised about whether services are in the hospital or in the community. Are there different kinds of services that really make more sense in one place than the other, so therefore you can consider greater numbers of services in independent health facilities?

**Ms. Barnes:** I would say it's probably not either-or. It tends to be a blend of both, because hospitals need to provide a full spectrum of services in order to do their role in treating the very sick people and the in-patients, and in some communities, there aren't enough people to warrant having the service in both settings. But there are opportunities to look at which services would be best performed in the community.

Then you also need to look at the quality issues. We have conversations, as part of those guidelines we developed with the College of Physicians and Surgeons, about the safety of providing those services there, and if they are provided there, do they need to be within a certain distance of the hospital in case a problem occurs?—those sorts of things. It does take a while to move through that process, and in some cases it's just more efficient, because of the volume of services, to have them within the hospital setting where they can do both types.

**Mrs. Munro:** I guess my question was, if we're sitting at about 1,000 right now, do you see pressures to increase the number, or is there a steady demand using the ones we already have? Do we have any sense of that?

**Ms. Barnes:** Off and on, there have been requests to increase the number of diagnostic services, perhaps largely related to relocation as the population changes, the high-growth areas around Toronto, for instance, where previously the population may have been more in Toronto and has been moving out of the Toronto centre. There have been requests around the redistribution of services, which I think the auditor also pointed out, in terms of the ability to do that. There's not a huge amount of pressure right now. There's certainly an interest in looking at the opportunities, but we may get a few requests a year.

**The Chair:** Thank you very much. I think that brings our questioning to an end. Do you have any closing comments at this time?

**Ms. Rappolt:** I don't believe I have anything more to add, other than to thank the committee very much for

their attention today. If there are matters on which we need to follow up, I know we will hear from research about that. We appreciate this opportunity today.

**The Chair:** Thank you and all of your assistants. I think you've been as direct as you possibly could.

Committee will recess for five minutes and then reconvene to talk with our researcher about the direction of the report.

*The committee recessed at 1138 and continued in closed session.*

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## **Legislative Assembly of Ontario**

First Session, 38<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Première session, 38<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Thursday 3 March 2005

# **Journal des débats (Hansard)**

Jeudi 3 mars 2005

## **Standing committee on public accounts**

2004 Annual Report,  
Provincial Auditor:  
Ministry of Labour

## **Comité permanent des comptes publics**

Rapport annuel 2004,  
Vérificateur provincial :  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Thursday 3 March 2005

Jeudi 3 mars 2005

*The committee met at 0936 in committee room 1, following a closed session.*

2004 ANNUAL REPORT,  
PROVINCIAL AUDITOR  
MINISTRY OF LABOUR

Consideration of section 3.09, employee rights and responsibilities program.

**The Chair (Mr. Norman W. Sterling):** Welcome. My name is Norm Sterling; I'm the Chair of the public accounts committee. Thank you for coming.

Deputy Minister Kivisto, welcome to our committee. Perhaps you would like to introduce those people who are with you at the front, and if some people come forward to answer questions of the committee later, perhaps you would introduce those people at that time as well.

I invite you first to make any opening comments you might like. Just before you do that, a member of the committee had a point of order.

**Ms. Shelley Martel (Nickel Belt):** I do have a point of order, and I want to ask for the indulgence of the ministry staff and the people from the public who are here. I want to move a motion. I don't intend to take a long time to do it. I'll move the motion and make some remarks, and then we'll get right to your questions. I'd like to hear what you have to say too, and I have questions for you as well. But before I do that, Chair, I'd like to move a motion, and I'd like to ask Tonia if she can give the committee members and the auditor's staff a copy of it. It reads as follows:

"I move, as per section 16 of the Audit Act, that the public accounts committee direct the Auditor General to fully examine the \$15.8-million sale of York University-owned land to Tribute Communities to determine if the public received value for money with this transaction/deal, and that the Auditor General report his findings and recommendations as soon as possible to the public accounts committee and to the Legislative Assembly through the Chair of the committee."

If I can make some remarks, Mr. Chair?

**The Chair:** Go ahead.

**Ms. Martel:** A couple of points that I'd like to raise: Firstly, members of the committee will know that this matter was raised in the Legislature this week by my

leader, Howard Hampton, on both Monday and Tuesday. What we know of the matter is as follows:

(1) That this multi-million-dollar land deal was untendered, even though its value was \$15.8 million;

(2) The land was sold for less than half of its value; and

(3) The person who brokered the land deal for the university, one Joseph Sorbara, is a close business associate of the land purchaser, Tribute Communities.

I think we all need to remember, and this was pointed out during question period, that this is a publicly funded university. It receives a great deal of tax dollars, and these precious Ontario taxpayers' dollars should go to students and not into the pockets of developers. On the face of it, it appears that there was a potential huge loss of funds for the university and for students, and that there is a conflict of interest as well.

Because it is a matter that involves the public purse and the public trust, we drafted a letter to go to the Auditor General, requesting that the Auditor General do a value-for-money audit of the land deal. My leader asked both the Premier and the Minister of Finance to sign that letter, to acknowledge their support for an audit to go forward. However, regrettably, both the Premier and the Minister of Finance refused to do this.

We do know, because we hear in the media, that the board of governors at the university has indicated that they will have this matter reviewed. The board has offered to bring in someone to review the deal they authorized. I can tell you that I and my colleagues in the New Democratic Party do not have a great deal of confidence in a process where the board that authorized a rather suspect deal in the first place is now also going to bring in someone and set the terms and conditions for a review of that same deal.

We think an investigation of the deal requires transparency. It requires an independent process. We believe that an audit by the Auditor General will achieve transparency, will achieve independence, and will give the public and ourselves every confidence that this matter has been most thoroughly examined and reviewed and that the recommendations that may come forward would be acted upon.

Those are my remarks with respect to this motion.

**The Chair:** Further comment?

**Ms. Laurel C. Broten (Etobicoke-Lakeshore):** First of all, we want to get a ruling from your perspective that

the motion is in order. It has been the tradition of the committee that we receive advance notice of motions that would be brought before the committee. I'd like that determination on your part, and then I will make some very brief submissions.

**The Chair:** I've asked the clerk, and the clerk is of the opinion and I am of the opinion that the motion is in order.

**Ms. Broten:** Thank you. In response to the comments Ms. Martel made, I think her focus has been extensively on the need for an independent process. At this point, I would suggest that the motion is premature. The university itself is undergoing an independent process and examination at this point. They have indicated that they will willingly open up the process and appoint an individual to look at that. That was certainly the information that has been made available to us. Obviously, this committee wants to see the results of the independent process being undertaken by the university itself in examining this. We can look at these issues at some point in time after the processes that are currently undertaken have proceeded to their conclusion.

**Mrs. Julia Munro (York North):** I just wish to add a couple of comments to the motion we're looking at. It has certainly been the practice of this committee, even prior to the extended legal authority of the Auditor General, to act as an independent committee of the Legislature and ask for special audits. First of all, it is something that is definitely within our purview to ask for, particularly in this case, as it is part of the expanded area of responsibility of the Auditor General, so I certainly support this motion.

**Ms. Martel:** If I might respond, there are two points I'd like to make.

Number one, I think the issue is, do people have confidence in the review the university will undertake? I have to say that we don't have confidence in the review the university will undertake, because the board of governors that authorized the deal in the first place is now the same board of governors that will hire the services of someone and set the terms and conditions for a review of the deal that they have already authorized. From a public perception, I don't think that fits the bill, in terms of responding to people's need to have a transparent process independent of the board that already signed the deal. The auditor—not only this auditor, but successive auditors—and the office itself have been the vehicle and the mechanism by which people have confidence that an independent process, a thorough value-for-money audit, would and could take place and indeed, in this case, should take place. That is why I raise this very serious concern, that the university will have its review whether or not anyone, at the end of the day, has confidence. Though the outcome remains to be seen, I suggest that people will not, given the fact that it is the same board that authorized the review in the first place that is now having someone come in and is setting the terms and conditions for a review of a deal they already agreed to.

Secondly, I would have hoped the McGuinty government would have been interested in letting the auditor

have a look at this and in signalling their support for that, because this is the same government that, just in the last session, through amendments to the Audit Act, increased the powers of the auditor to do audits like this. On November 22, 2004, Minister Sorbara himself said, "We will allow the Auditor General to shine a light on organizations that spend taxpayer dollars, ensuring that Ontarians are getting value for the money they invest in public services." We think the auditor should shine a light on this very suspect deal.

I remind people that it's a land deal that was untendered. Secondly, the land was sold for less than half of its value. Third, the person who brokered the deal for the university, Joseph Sorbara, is a close business associate of the land purchaser, Tribute Communities. We should shine a light. I think the Auditor General is the exact person to do that, and do that as soon as possible. I hope the committee members support this resolution.

**Mr. Richard Patten (Ottawa Centre):** Before you call the vote—it certainly suits the opposition parties' purposes, of course, to try to embarrass the government.

Every time we hear something has gone amiss and we then discredit and undercut the governance of universities or what have you, what does that say to them? They have called for an independent review. They will make this review transparent and share that with everyone.

By the way, the Auditor General has full access now to these institutions. I think it's premature, and I won't be supporting it.

**The Chair:** No further discussion?

**Ms. Martel:** I'd like a recorded vote, please, Chair.

#### Ayes

Martel, Munro.

#### Nays

Broten, Flynn, Mauro, Patten, Zimmer.

**The Chair:** I declare the motion lost.

We will now proceed with our examination of the auditor's report with regard to the Ministry of Labour.

**Mr. Paavo Kivisto:** Thank you, Mr. Chair and members. We have copies of my speaking notes that we'll pass out for your convenience. I'd like to introduce my colleagues with me here this morning.

**The Chair:** Before you do that, just so you know how these microphones work: They go on automatically; you turn them off by pushing the button.

Well, they're supposed to do that. I guess they don't. Go ahead.

**Mr. Kivisto:** I'm joined this morning by Helle Tosine, who's the assistant deputy minister of operations for the Ministry of Labour; Brian Lemire, who's the director of the employment practices branch; and Len Marino, who's the acting chief administrative officer for the Ministry of Labour.

Thank you for the opportunity to address the standing committee on public accounts to discuss the Provincial Auditor's report—it was the Provincial Auditor at the time, though I understand that it is now the Auditor General—and to report on the employment rights and responsibilities program.

The program is charged with the effective administration and enforcement of the Employment Standards Act. We recognize that the act plays an important role in the everyday lives of approximately six million workers and their employers in Ontario. The act protects workers by legislating minimum standards related to wages and working conditions. It sets out, amongst other things, the minimum wage and lays out rules about public holidays, vacation pay, overtime and hours of work. It deals with matters that affect working people, particularly vulnerable and low-paid workers and those who don't belong to a union.

The act is also important for employers, particularly small business. It gives them a common set of minimum employment standards that they and all their competitors must meet. The Employment Standards Act establishes ground rules so that workers are treated fairly and a level playing field is established for employers. Most employers treat their workers fairly and benefit from improved loyalty, morale and productivity.

0950

We thank the Provincial Auditor for the report. On an overall basis, the ministry accepts and has acted swiftly to address the recommendations in the audit. We have placed a high priority on making changes.

I am pleased to tell committee members that work was already well underway in a number of key areas identified in the audit. In late 2002, the ministry recognized the need to make significant changes in the emphasis and operation of the employment standards program and began tackling many of the issues that were subsequently identified by the Provincial Auditor. The audit report underscored the need to continue with the changes that were underway, while it also made important recommendations for improvement in other areas.

The ministry has adopted a vigorous three-pronged strategy which addresses issues raised in the auditor's report. The three prongs are (1) heightened awareness, (2) improved claims administration and collection of money, and (3) strengthened enforcement.

Over the past months, we have made a dramatic shift in our approach to the administration and enforcement of the Employment Standards Act. We are making major progress in all areas dealt with by the audit, including: expanding access to information for employers and workers; new measures to recover more money owed to employees, with \$2.3 million more recovered; proactive targeting of employers and sectors with bad employment standards records, with 1,418 proactive inspections completed so far, resulting in the recovery of \$690,049 owed to employees; strong, new emphasis on enforcement, with 229 prosecutions commenced since July 2004; and action taken to quickly address shortcomings

in the administration of the trust fund. We readily acknowledge that the steps we have taken are just the beginning. It will take time to fully implement them. We are confident that our actions will result in a higher compliance rate by employers, faster turnaround time of claims and better results in recovering money owed.

Before I go into details, I want to provide members with some context. It's critical to remember that the vast majority of employers comply with the law and provide their employees with the wages and working conditions required by the act. Unfortunately, however, that's not always the case with respect to some employers. In the last year, 16,175 claims were filed with the ministry under the Employment Standards Act. Typically, the employment standards officer finds contraventions of the act in about 70% of these workplaces. We have strong indications that in some sectors, we don't hear about the majority of compliance problems. Many workers don't contact the ministry or file complaints. The auditor has pointed out the need to take steps to improve the overall compliance rate, not just deal with complaints, and we in the ministry agree. From our perspective, the point of increasing the compliance rate is to reduce the need for workers to file complaints with the ministry. People should not have to fight to be treated fairly.

I will now take you through some of the key steps we are taking to deal with the issues raised by the audit and fill you in on some of the actions that we already had underway before the audit started.

In April 2004, the ministry launched a three-part strategy to improve compliance with the act and deal with other specific issues raised in the audit. The three components of the strategy are outreach and awareness, improving claims processing, and collections and better enforcement.

In the area of outreach and awareness, the ministry provides information to employers and workers through a call centre, through written publications and on the Internet. There were about 440,000 calls to the call centre in the last fiscal year. In 2004, there were about 3.3 million visits to the employment standards section of our Web site. During these visits, 3.8 million pages or documents were viewed. This tells us that there is considerable demand for information on the act and its administration.

The act is complex, and in some parts it can be hard to fully understand. That problem is heightened when we have employers and employees whose first language isn't French or English. The ministry has undertaken significant new initiatives to assist workers and businesses in learning about their rights and responsibilities. We've acted in two areas: We have provided businesses with access to Web-based information, and we have made information available to those whose first language is not English or French.

For businesses, the Ministry of Labour worked closely with the Ministry of Consumer and Business Services to develop and launch the workplace gateway. It's essentially a one-stop Internet site where both employers and

workers can access information. This site was launched on November 2, 2004. It complements the extensive multilingual information about employment standards already available on the Ministry of Labour's main Web site.

In October, the ministry released four brochures which contain clear and concise information about key aspects of the Employment Standards Act. We made these available in 19 languages in addition to French and English. The response to the other languages has been very good, with strong interest in multilingual products on our Web site, including the brochures.

To further assist employers and employees, the ministry revised and simplified the employment standards poster, which must be posted in all workplaces. We made it easy to download and free, and we published it in 19 other languages in addition to French and English.

Acting with community partners to get information to those who need it, the ministry has reached out to over 100 organizations to seek their assistance in providing information on employment standards to their constituents. These organizations include legal aid clinics and various multicultural community groups. We've also partnered with the Ministry of Economic Development and Trade to provide information on the program to potential business entrepreneurs, including those from other countries, and, at times, in languages other than English and French. The ministry will continue to seek additional partnerships and ways of making information on employment standards available to workers and businesses.

In the area of improved claims processing and collections, the ministry is making significant changes to speed up the rate at which claims are processed and to improve the effectiveness and timeliness of collections.

In the area of claims, part of our strategy has been to streamline intake and implement a triage system to put claims into the hands of decision-makers earlier, thus reducing overall time to render decisions. We've also established centralized, dedicated teams that now deal with complex files. This allows the ministry to better use resources and creates a centre of best practice. We have set a program target to render decisions on 80% of claims within 90 business days of receipt, and we are exceeding this target. As of December 1, 2004, we are rendering decisions on 82% of claims within 90 days. By moving claims through the system efficiently, a decision can be made much earlier as to whether money is owed and whether claims need to move to our collections process.

The ministry has recognized that it needs to increase its collections rate. In July 2003, we initiated a review of the collections function and set up a centralized collections unit in the central region. This unit ensures that all collection and enforcement options have been exhausted on all files. The central region deals with 55% of the province's collections workload. The unit has already resulted in the collection of \$2.3 million since its inception in 2003. This is money that would otherwise not have been collected.

As the auditor noted, the best collection rates across the country are in the range of 20% to 35%. Even this is not satisfactory. The ministry is continuing to explore best practices with other provincial ministries and jurisdictions to identify ways to increase the effectiveness of its collections process. However, both the investigation of claims and collections activities are the tail end of the process. The objective is to get compliance rates in the workplace such that workers get monies they are owed without having to file a claim with the ministry. Outreach, proactive inspections, and enforcement are critical to improving the compliance rate.

In terms of enforcement, the ministry acknowledges that its approach to enforcement has been largely reactive over the years. This approach has not provided a sufficient deterrent to non-compliant employers, and has not been an effective tool in ensuring the collection of unpaid monies. Therefore, our approach to enforcement has significantly changed.

In 2001, the ministry began using notices of contravention as an enforcement mechanism, as a result of the introduction of the Employment Standards Act, 2000. These notices are administrative monetary penalties that range from \$250 to \$1,000 per offence per employee. So far this year, there have been 309 notices of contravention issued.

Beginning in the latter part of 2002 and early 2003, the ministry started revamping the program to put more emphasis on strengthening enforcement and outreach. In April 2004, the ministry launched a three-part strategy to improve compliance with the act. The three strategy components are outreach and awareness, improving claims processing and collections, and better enforcement.

We now have a new prosecution policy that provides clear direction to officers on the circumstances where prosecution should be considered. Since the implementation of the policy in July 2004, there have been 229 prosecutions commenced. That compares to only 18 prosecutions in the past five years, as reported in the audit. In addition, we have committed full-time resources to carry out proactive inspections, and we increased the range of enforcement tools available to employment standards officers.

#### 1000

A fully dedicated inspection team was put in place as of July 1, 2004, with the objective of conducting 2,000 inspections. These inspections are targeting high-risk employers in high-risk sectors and employers who have a history of multiple claims filed against them. The ministry has already conducted 1,418 proactive inspections and is working very hard to achieve its commitment of conducting 2,000 by the end of March 2005—the end of this fiscal year. As of February 18, these inspections have resulted in a total of \$905,243 being assessed, with a recovery rate of 76%, resulting in the recovery of \$690,049 for workers.

Since July 1, 2004, employment standards officers have been issuing tickets to employers for employment

standards violations under part I of the Provincial Offences Act. This new ticketing tool is an effective means to increase compliance.

More serious offences will continue to be prosecuted under part III of the Provincial Offences Act, which has larger fines and imprisonment.

We also acted on the Provincial Auditor's recommendations to place greater emphasis on extending investigations of claims to cover other employees. We have taken action on three fronts:

(1) When an employment standards officer investigating a claim believes that other employees may also have entitlements, they may refer the issue to our proactive team, which will follow up with an inspection of the workplace in question.

(2) Our proactive inspections are targeting high-risk employers who have a history of multiple claims filed against them.

(3) In about 10% of claims where violations are found, the officer continues to conduct an investigation that expands the audit to include other workers.

I would like now to turn to a few other specific concerns raised by the auditor.

On information systems, the audit noted that our employment standards staff needs access to accurate, relevant and timely information for decision-making. It recommended that the ministry obtain approval for the development of a new information system. We are moving ahead on this recommendation as part of a broader service delivery strategy that includes providing information to the public through multiple channels and in multiple languages. For example, I mentioned earlier that we have launched our workplace gateway, which provides employers and workers with easy access to employment standards information, among other things. We're providing information in 19 languages, in addition to French and English.

We're also pursuing approval to implement a province-wide information system, as recommended by the auditor. The system will provide our staff with information they need, while also providing better service, including allowing the public to file claims electronically and to check on the status of their claims on a 24-hour-a-day basis.

On quality assurance, the auditor recommended that the ministry improve its documentation of claims and investigations. The audit also proposed expansion of quality assurance procedures to ensure that the information we obtain is adequate for enforcement and management decision-making.

The ministry recognized the need to put a quality management system in place to ensure that policies and procedures were followed. A quality assurance audit system was developed and implemented in 2003, which entailed auditing 5% of files. This quality assurance audit found that officers are generally doing well in areas such as following policy and procedures during investigations, reaching decisions on claims, and completing information enforcement orders and related materials. How-

ever, areas for improvement were also identified, including mailing timely acknowledgement letters to claimants and completing information required to fully document the claim.

The findings of the Provincial Auditor are similar to those found by the ministry's quality assurance audits. The ministry has taken steps to ensure that staff are able to make the necessary changes, and the ministry is monitoring compliance with policy and procedures through the quality assurance audit process.

Next month, in April, we will be reviewing the results of our 2004-05 quality assurance audit to further strengthen program delivery. This is an ongoing continuous improvement process to ensure that we're monitoring enforcement activity and supporting management decision-making.

Measuring and reporting on program effectiveness: The ministry agrees with the current audit findings that more comprehensive indicators to measure the program's effectiveness are needed.

Beginning in the latter part of 2002 and early 2003, the ministry started revamping the program to put emphasis on strengthening enforcement and outreach. The work also entailed developing outcome measures, including client satisfaction and compliance rate. These new measures were launched on July 9, 2004.

The program measures are to achieve a compliance rate of 80% for specified sectors, to achieve a 78% overall customer satisfaction rate, and to render decisions on 80% of claims within 90 days.

In response to the auditor's recommendation that the ministry should report on other program indicators, we will be publishing information on our targeted enforcement initiative, including the more common violations and enforcement measures. We are now piloting this information on the ministry Intranet Web site—that's internal to the ministry—and will be publishing it on a public Internet site soon.

Trust funds and financial controls: The ministry has taken immediate and concrete action to address the audit's recommendations on safeguarding assets held in trust. Immediately following the audit, the ministry brought in its chief accountant and other financial control staff to bring the expertise needed to ensure that proper controllership principles and practices were implemented.

One of the most important findings of the auditor relates to the lack of monthly reconciliation with the bank's accounts. The root cause is that head office and 26 field offices were making deposits into the trust fund. This made it very difficult to reconcile. In September, we put a stop to that practice. Now all deposits are made and accounted for in our main office. This enables more effective reconciliation. However, the work is labour-intensive and we are looking for software to ease the workload and enable more accurate accounting.

Action has been taken to follow up on specific situations cited in the audit report and to take appropriate action, including payment of any outstanding monies to claimants.

Random audits of files are also being conducted as part of an ongoing quality control program to ensure integrity of information.

The audit expressed concern about an inability to locate claimants and give them money. We've addressed this issue, and 44% of the claimants have now been located.

On a going-forward basis, the claim forms have been revised to include alternate contacts, including address and telephone number, and a message asking people to advise the ministry of address changes.

These interim steps represent a good start, but we recognize that we need to go further.

A review of the trust fund operations is continuing, with a view to further improve the effectiveness of financial controls. The internal audit division will conduct a follow-up audit on the appropriateness and effectiveness of trust fund controls in this fiscal year, 2005-06.

Before I wrap up my presentation, I would like to acknowledge that the audit report highlighted five areas where issues that were raised in the 1991 audit had still not been resolved at the time of this latest audit.

The five specific areas from the 1991 audit highlighted in the report are: ministry officers not extending an investigation to determine whether similar violations have occurred with the same employer; no proactive inspections; virtually non-existent prosecutions; inadequate computer and communication technology; and unsatisfactory measuring and reporting of the program's effectiveness.

As I have already outlined, we accept these findings and have taken steps to deal with those outstanding issues.

Committee members may wonder why it took the ministry so long to act on recommendations made in 1991. Although it was recognized that prosecutions, proactive investigations and the other issues raised by the auditor were important, the ministry spent almost all its time dealing with claims. The emphasis was mainly on getting people the monies they were owed.

The ministry did manage to carry out more than 1,000 proactive inspections for four years starting in 1998-99, but that was not sustained. A backlog in claims arose and, as a result, the ministry refocused its efforts on dealing with claims.

It is not that significant improvements were not made in the 1990s. For example, one major focus for the ministry in those years between 1991 and 2003 was improving public access to information about the Employment Standards Act. The ministry introduced an employment standards call centre, which now receives more than 400,000 calls a year. It started providing comprehensive information to employers and employees through the Web site. We began accepting e-mail inquiries, answering 4,000 a year. But overall, it wasn't until late 2002 that the ministry recognized the need to make significant changes in the emphasis and operation of the employment standards program. That is when work began to

strengthen enforcement and outreach and to improve collections. That culminated in April 2004, when the ministry launched a three-part strategy to improve compliance with the act, which I talked about earlier.

We readily acknowledge that the steps we have taken are just the beginning. It will take time to fully implement them. Other improvements must still be made.

We have our strategy in place: of heightening awareness, improving claims administration and collection of money, and strengthening enforcement. We are confident that our actions will result in a higher compliance rate by employers, faster turnaround of claims, and better results in recovering the money owed to workers.

#### 1010

The ministry administers and enforces the Employment Standards Act to provide fairness for workers and their families, to level the playing field for business, and to promote productive workplaces that provide a healthy economy for all Ontarians.

I thank the committee members for the opportunity to provide them with an update on a dramatic shift in approach and on progress we are making to improve the administration and enforcement of the act at the Ministry of Labour.

**Mr. David Zimmer (Willowdale):** With regard to these proactive investigations, can you give this committee a sense of what industry sectors tend to have more problems or to be repeat violators? Just by sector; don't name anybody.

**Mr. Kivisto:** Certainly we can. We did analyze our complaint investigation information and identified that 80% of the contraventions were occurring in specific sectors. I'll have Brian just mention those to you. My recollection is that restaurant and tavern and some of the service sectors were particularly noted.

**Mr. Brian Lemire:** The three sectors that we identified as having the majority of claims filed against them, and where we're focusing our proactive inspections, are the restaurant/tavern industry, the retail sector, and business management services, which includes occupations such as cleaners in buildings and security guards, for example.

**The Chair:** Could you introduce yourself, sir?

**Mr. Lemire:** I'm sorry. My name is Brian Lemire. I'm the director of employment standards.

**Mr. Zimmer:** Just following up on that, then, I note that you've got a plan underway to publish notices and information on an Internet service and so on. My question is, on the premise that those sectors employ significant numbers of new immigrants who perhaps have language difficulties and no access to electronic transmissions and so forth, what's the plan to reach out to those sectors, given the typical employee profile in the sector?

**Mr. Kivisto:** In Ontario, the extent of immigration is very significant compared to the rest of the country. The information that we have is that approximately 70% of the new workers are going to be immigrants. They have their unique challenges in terms of culture and language.

That's why we work hard to produce information in 19 languages other than English and French. We did that on the basis of the nature of the immigration profile that we have and people joining the workforce. We've also reached out to over 100 organizations, many of which interact with these cultural groups and minority groups, as a way to help bridge the information needs of those workers and the Ontario government.

We believe that our outreach and awareness activities are starting to have an impact, though we need to continue to work aggressively to identify additional ways of reaching out to workers so that they understand their rights. I think the goal here is, if workers understand their rights, if employers understand their responsibilities, they'll be treated fairly and they won't need to come to the government to file a complaint, and we'll have less conflict in the workplace.

**Mr. Zimmer:** My last question: I'm assuming that that 80% in the sectors where you've got the majority of the problems—for the most part those are sectors not covered by collective agreements?

**Mr. Kivisto:** The way the Employment Standards Act is written is that if there is a collective agreement in place, the workers are expected to work through their union to achieve compliance with the Employment Standards Act. So the focus of the Employment Standards Act and its administration is almost entirely on non-union workplaces.

**Mr. Zimmer:** So now we have the situation where we have a sector with about 80% of the complaints, a non-unionized environment, and new immigrants with cultural and linguistic challenges. I expect you're going to redouble and triple your efforts in that area.

**Mr. Kivisto:** Absolutely. Part of the strategy going forward was a heavy emphasis on outreach and awareness, and we have worked really hard to improve in that area in the last year or so. That will continue to be an area of focus for us because, really, that is a tremendous challenge.

**Mr. Zimmer:** When you're working in that area, going forward, what are the measures that you're going to measure yourself against to decide whether you've made progress or been successful in covering the sector?

**Mr. Kivisto:** You have to have multiple levels of measures. The ultimate measure is that there's compliance with the law, so compliance rate is a really important area. We are doing random inspections of one of those sectors, the restaurant sector—about 200—to establish what normal compliance is. Once we have that, we will then put a concerted effort in place with the workers, with the employers in that sector and others to improve their knowledge of what's a contravention finding and things they can do to address it so that we get a better compliance rate. Clearly, also, we have an employment standards working group of stakeholders, which is chaired by the parliamentary assistant, Mr. Flynn, that brings the stakeholders together with the ministry to help guide us about ways that we can improve the administration and operation of the ministry's program,

including this piece. I think, through getting feedback from the 100 organizations we've partnered with from that action group as well as our own observations in the workplace, we'll get a pretty good sense of whether we're achieving a higher compliance rate.

**The Chair:** The auditor has a supplementary.

**Mr. Jim McCarter:** Just a follow-up: It was good to see that you've done 1,400 proactive inspections. That's a big improvement from the last couple of years. I just wondered: You were finding a violation rate of between 40% and 90% on your proactive inspections in the past. Are you still finding that sort of percentage?

**Mr. Kivisto:** I'll ask Brian Lemire to respond to that. He'll look at the numbers. When I looked at the numbers in preparation, there was quite a range from year to year in terms of the compliance rate, and much depends on how effective your targeting is. You would hope that if we're effectively targeting, we'll pick the sectors with the poorest compliance rates, so I would expect to see that number higher than what we've seen.

**Mr. McCarter:** What I was wondering is, when you only do very few, you're probably targeting very, very high-risk, so you probably get a higher violation rate than if you're doing, say, 1,400. I was just curious to know if the violation rate—and I don't need the answer now, if it takes a minute to get it. I was just curious.

**Mr. Lemire:** I can tell you that it's above 70%, and it's more in the range of 75% to 85%. I don't have the exact figure, but I can get back to you with that.

**Mr. Kivisto:** We need to see the outcome of those random audits on the restaurant sector, the 200, because those aren't necessarily targeting repeat offenders. That's what's going to establish a compliance rate for the sector as a whole, knowing that we're targeting most of the proactive inspections to what we believe are the poorest performers.

**The Chair:** I have Ms. Martel and then Mrs. Munro next, but I'm going to allow Mr. Flynn to go next because of the brief time of your question.

**Mr. Kevin Daniel Flynn (Oakville):** I'll be brief as well. I've got three questions that don't require, I don't think, extensive answers. In the opening remarks, you said that, for the most part, you agree with the auditor's findings and respected them. What was said on page 243 of the report was, "To more effectively enforce the Employment Standards Act, 2000, and better protect the rights of currently employed workers, the ministry should: expand investigations when individual violations are found and increase the number of proactive inspections in higher-risk industries...."

I know you've said, on a few occasions this morning, that you've put a great deal of focus on the proactive inspections. I'm interested in the process you use: How did you choose the high-risk industries? What happens? Is there no advance notice of a visit? You just show up on-site: What follows after that?

**Mr. Kivisto:** As we embarked on our three strategies, we were thinking very carefully about how we can make the biggest impact through the proactive inspections. In

the past, as the auditor noted, our activities were largely complaint-driven. In order to ensure that we don't fall off the wagon, as has happened in the last few years, by putting a full-time dedicated team—that's all they do; they don't get distracted by complaint investigations or calls from workers asking about the status of their claim—we think we've got enough focus and ability to manage that activity so we can deliver those 2,000 inspections.

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We did carefully select the sectors, based on historic information. As a consequence, that team is out delivering those inspections. They are working very hard: 1,418 have been conducted to date. We are going to achieve that 2,000 by the end of March. We're very serious about our commitments and we're pursuing that with vigour. As I said earlier, the sectors that we've chosen were based on complaint records and the investigations and an 80% compliance rate in those specific sectors where we do it.

In terms of the specific process, I'll ask Brian to describe how the officers plan their work and carry out the proactive inspections.

**Mr. Lemire:** The dedicated enforcement team used a risk-based approach to developing its methodology that was based on work that was done by an investigations, enforcement and inspection secretariat. Helle Tosine, the ADM, might be able to speak to that a little more broadly.

The officers look at the history of that particular company, if there happen to have been any claims filed with that company in the past. They're also looking at the types of violations that have been historically found with that sector prior to going in. When they announce their visit, if they do announce it, it's scheduled perhaps a week in advance in order to make sure that records are there. At other times, the officer will conduct a surprise visit, without giving previous notice.

They will inspect the workplace and the records of the workplace. They'll speak to individuals in the workplace to determine, for example, if they're working beyond 48 hours and there is a requirement for written agreements, whether those written agreements are in place and whether the employee voluntarily agreed with working those excess hours.

The investigation results in an inspection report, which may include orders issued. It may include tickets that might be written if there are violations per our prosecution policy that warrant the issuance of those tickets. The officer may require the employer to post the results of that investigation report in the workplace so that it can come to the attention of the workers there.

**Mr. Flynn:** It has been almost a year since some of the changes were implemented, the three-pronged approach. Have you been able to review the progress you've been able to make in a quantifiable way yet? Are we seeing any sort of results from the changes you've made, or is it too early to tell?

**Mr. Kivisto:** If the real measure of the results is improved compliance rate, it's probably too early to tell that. But we can certainly see the outcome in activity of the field visits. We know precisely how many field visits we've done. We manage that on a weekly basis, and we are ensuring that we deliver on that.

We also have a lot of data about orders issued, the kinds of orders issued and prosecutions. As I mentioned, it has resulted in 229 prosecutions.

We monitor the amount of money that has been assessed and how much is collected. I talked earlier about the proactive inspections resulting in close to \$900,000 being assessed and about 76% of that being recovered and paid out to workers.

One of the unique facets of that program as well is that the officers sometimes request the employer to carry out a self-audit. So if the employment standards officers found there are some contraventions and suspect that it may be more widespread, they have asked the employer to carry out a self-audit and submit it to the ministry. Employers have identified errors they've made and oversights, and it has resulted in considerable monies as well being voluntarily paid by employers to workers. I think that speaks to the fact that some employers just have a hard time understanding legislation, and when they understand that they've made mistakes, they correct those. I think the proactive inspections certainly are putting money in the hands of workers. We are finding contraventions. We're dealing with those and following up to make sure there is compliance with the law. In the longer term, I think we'll be able to talk about compliance rates, and that will really tell us whether or not we can shift our attention to some other sector.

**The Chair:** Can I ask a supplementary in this area? You were talking about 1,400 proactive investigations. The recovery rate is about \$700,000 for the 1,400. That comes down to a recovery rate of about \$400 or \$500 per visit. One of the problems I have with the 1,418 is that I don't know how big those employers are and whether this is a two-hour inspection or a two-week inspection. Can you provide the committee with the number of employees who are covered by these 1,418 inspections?

**Mr. Kivisto:** I certainly can. There were approximately 931 employers involved in those 1,418 proactive inspections. We know that the self-audits that we asked for in 236 of those cases covered about 4,685 workers, with about \$624,000 being collected and paid out voluntarily. So we are talking about thousands of workers in those places.

These tend to be small to medium-sized businesses. I believe that a typical inspection—Brian can correct me—is about two to three hours on-site, plus the preparation time. Our average claim in employment standards—these aren't huge figures when you look at it from the outside, but for those workers and their families, these are significant dollars. What is the average claim to the ministry—the average dollar value?

**Mr. Lemire:** The average dollar value is somewhere between \$750 and \$1,000.

**The Chair:** Because of the way you seem to have set the parameters here, I just don't want your inspection team, because you're shooting for 2,000, to overlook a larger employer because you only get one inspection out of 2,000.

I'm sorry, Mr. Flynn.

**Mr. Flynn:** That's fine. Good question.

I have a question that is almost supplemental to the previous question, and that is on the aspect of the collections that was pointed out by the auditor. If you read the report, it seems to say that the private agency isn't really doing that well and that the ministry itself isn't really doing that well and that we should be more timely and more vigorous in our collections. With the moves that you've made to date—even though it is early, and they've only been implemented for less than a year—are you seeing any increased results on your collections?

**Mr. Kivisto:** Collections certainly is a challenging part of the work that we do. It's also a challenge for other jurisdictions, as the Provincial Auditor has noted, across the country. Collection rates are varying: 20% or less. In Alberta, they're 20% to 35%. Even at that, that's not as good as it needs to be.

We put that centralized collections unit in place in the central region in July 2003. It has a handful of staff, but they are rigorously reviewing all the files where we're going to seek collections activity before they go to the collections agency. Here in Ontario we use a mixture of public and private services, as Alberta does. When a file goes to a collections agency, they do their work to achieve collections and then they return it to the ministry if they've been unsuccessful. We go through that file again and make sure everything possible is done to collect the monies. That unit has recovered, since July 2003, an additional \$2.3 million. The collections agency is achieving about an 18% collection rate, and just from my preliminary look at our data over that period of time, we've about doubled that. They collected \$2.3 million, over that year and a half to two years we're collecting about \$1 million, and a private agency is collecting about the same amount.

So I think we're making good inroads. Is it good enough? No, it's not. Is it a problem elsewhere, in other jurisdictions? Yes, it is. It's a problem for other ministries. We have started discussions with some other ministries to take a look at the collections activity across the Ontario government to see if there are some best practices that we can all learn from, because, really, some of those files are very, very difficult, but at the same time, you need to do everything possible and you need to operate efficiently.

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Still, there is the tail end of the process. The claims investigating and collections activity, although it's important and we need to work hard to improve—getting into the workplace with information, the proactive inspections and other things so that there's compliance with the law before people have to file a claim, I think, is a better strategy. Having all three elements will help us

be more successful in ensuring compliance with the act in workplaces.

**Mr. Flynn:** Thanks for the answers.

Thanks for the time, Mr. Chair.

**The Chair:** I'm tracking: 20 minutes up to the Liberals and five minutes up to the PC caucus on that 25 minutes.

**Ms. Martel:** Thank you for being here this morning. I have a number of questions, but I just want to make a general comment. I appreciate what you've said in terms of trying to redirect your strategy, and some early indications of that success. I guess I need to put this in a context in terms of what you're up against.

With 151 inspections last year, you would have covered about 0.1% of Ontario workplaces. If you get the 2,000 done by the end of March—you've said that you will, so I assume that will happen—you will have covered 0.7% of Ontario workplaces. That leaves a lot of employers out there who will never be inspected, and a lot of employees out there who may never have their issues dealt with. I compare that to the figures from your health and safety branch, which say that on an annual basis you're probably into about 12% of Ontario workplaces. I would make the argument that that's not enough either.

While I hear what you're saying and I appreciate the changes that have been made, I don't see, with that low, low level of possible inspection coverage, how the ministry can really be clear that even doing the 2,000 inspections is going to act as a deterrent, and how you're really going to get into those workplaces where there is systemic exploitation of workers. I want to say that right off the top.

My concern is that I don't know what's going to happen in this next budget process, but it's going to be interesting to see if you're going to even be in a position to carry on the 2,000 inspections, depending on what your funding is. I don't know that there's going to be an opportunity for much more. I think that's going to continue to be a problem for workers out there as a result, and for employers who know that it's likely that no one from ESA will ever darken the door of that place of employment.

The 2,000 inspections were, as I saw in the government announcement, very much for this year. Is this an ongoing inspection pattern? Is this going to be 2,000 inspections for sure, with hopefully the possibility of more this year, next year and the year after? Do you have the financial commitment from the political wing to allow that to happen?

**Mr. Kivisto:** I think the short answer is yes. Proactive inspections are one of our three main strategies. Clearly, we're fully committed to that. I think what's different is that it's a full-time team—it does nothing else other than proactive inspections—so that an officer is not torn between dealing with complaint investigations and calls from workers. We need to evaluate, as we move forward, how effective our strategies, including the proactive inspections, are in achieving better compliance rates, and

then adjust our strategy and then perhaps our resourcing, as needed.

I am confident that with the goal being to achieve better knowledge about rights and responsibilities in the workplace—if we can do that, that will go a long way to ensuring that workers can get what they're entitled to get under the legislation, by engaging those 100 organizations to help us champion that with workers, so that they're more confident. We've heard from the action group that was formed with stakeholders the message that sometimes workers, particularly immigrants and some other vulnerable workers, are afraid to come to government. So if we've got other partners who have good relations with them, they'll help us communicate with them and ensure that their issues are brought forward.

**Ms. Martel:** If I might, Deputy, I really don't think the problem is workers understanding their rights; I think the problem is workers having their rights enforced. I just can't say that strongly enough. There are some cases I could raise here today where immigrant workers, with the help of some of those same organizations, have been to the ministry endless times and still don't have their money and still don't have their issues resolved. The ministry can issue publications in 19 languages to tell workers of their rights, but frankly, if the ministry isn't doing inspections or using all the enforcement tools at its disposal, then having those rights is meaningless.

I think that's the real problem. I don't think it's a question of workers not understanding their rights or not wanting to get them enforced; I think the problem is that they're not getting those rights enforced or they feel it's useless to try because other workers in the same workplace have tried and gotten nowhere. I think that's the biggest problem you've got.

**Mr. Kivisto:** I agree. I think I acknowledged up front that doing only information provision isn't the solution. You have to have laws and effective enforcement of laws. We have shifted a long way toward that in the last year or two. We've talked about the prosecutions that have been commenced since July 2004. We talked about the 309 notices of contravention that were issued this past year. Eighteen prosecutions in the last five years, compared to those numbers, is a significant change. Employers need to understand that the laws are there and the laws are being enforced, and workers need to see that as well. The auditor's recommendation that we publish this information so that the message is out that government is serious is an important part of our strategy.

I agree with you completely that that has not been the practice. This is now the new practice, the new approach, and I think it will have significant impact on the issue you just talked about.

**Ms. Martel:** Could I get some information about the number of those issues? You said there were 16,175 claims in the last year. Is that 2004-05, to this point?

**Mr. Kivisto:** I'll ask Brian to respond, but that's my understanding.

Let me just say that the number of claims that have been filed with the ministry vary from 13,000 to about 15,000 or 16,000 per year. The statistic I was given last was 16,000-and-some this past year. There were 16,175 in 2003-04.

**Ms. Martel:** So it was higher than the number that was noted in the auditor's report. Right now, how much money is owed to how many workers in the province?

**Mr. Kivisto:** Perhaps the way to look at it, Brian, is if you look at the collections information.

**Ms. Martel:** I wasn't sure that the collections would give me a true understanding. You have money coming in that's being collected; you have money that's not being collected. I want to get the collections too, but I'm interested in the total owed right now across the province, and in how many workers are affected by that.

**Mr. Lemire:** Perhaps we could get back to the member on that today.

**Ms. Martel:** OK. There might be a whole series of things you're going to get back to me on. That's the first thing: How much money is owed, and how many workers does that involve?

Could you give us a sense of how many workplaces are involved—I don't know if you can do that breakdown, but I'm assuming you can, because a worker would be attached to a workplace. How many workplaces in the province does that represent?

I'd like to know how many extended inspections have taken place since the audit done by the Provincial Auditor.

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**Mr. Kivisto:** Just to address the broader issue, of the 15,000 or so claims that come in to the ministry, about 80% to 85% of the workers get some or all of their money from early intervention with the ministry. We put the remaining 15% to 20% into our investigations and collections activity. About 20% to 22% of the claims we get in are not founded; there's no entitlement.

So workers are accessing monies—sometimes all or part of it—just through raising it with the ministry, and we work with the employer to get that sorted out. The 20% that go to collections we put into claims investigations, write orders to pay and pursue the collections activities.

We can give you some of that information now.

**Mr. Lemire:** I have the figure for the number of employees who have been assessed as owing money this last year. It totals 13,820.

The amount of money that has been referred to the collection agency as a result of not being able to collect that money on behalf of the employee through an order to pay or through the investigation that's currently with the agency is \$16.3 million.

I will have to get back to you on the number of employers.

**Ms. Martel:** Is that in one fiscal year, or is that the total? You would have a carry-over from a number of years, right?

**Mr. Lemire:** There would be, but this is for 2004-05, to date.

**Ms. Martel:** It would be great if you could give me the cumulative total—and you can get that for us—in terms of workers implicated and money owed.

**Mr. Lemire:** If I may, over what period of time?

**Ms. Martel:** How far does this go back? At what point do you close your files? Do you do it after five years or 10 years, or do you have a different process?

**Mr. Lemire:** The longest time a file is probably open is if a writ has been filed with the court and it remains with the court for six years.

If there's a determination that there are no realizable assets—it's a shell corporation or there's no money in the bank account—once the collection agency and the centralized unit that the deputy referred to have looked at this money, and once we've pursued director's orders to pay, and related companies that may have ties and obligations owed to the original company—once that has expired, we close the file. So the longest is somewhere in the neighbourhood of six years, because of the filing of the writ in court.

**Ms. Martel:** You would have that information on file already, then?

**Mr. Lemire:** I don't know that we would have that collated in the way you're asking for it, but the records would be kept. If a file has a writ applied to it, then that file is kept with the ministry.

**Ms. Martel:** How about I say, for as much as you can have a sense of what the whole total is, is what I'd like to get. I'm not sure I understand all the complications involved in getting that, but I'd appreciate having the most appropriate cumulative total you can get.

I asked you how many extended inspections took place this fiscal year as a result of the auditor's report.

**Mr. Kivisto:** While Brian is looking for the information, I know that the percentage of extended investigations varies from about 5% to 15% from year to year, and I think we were in that ballpark in the past year.

**Ms. Martel:** You did about 802 last year. I'm going to assume that has increased, given the recommendations that the auditor made. Again, I'd like to get that figure.

Of the 1,400 proactive inspections you did, do you list the employers in a public way? Also, if money was recovered, do you provide that publicly, so that other employees in a similar workplace who haven't been covered by an extended inspection might actually know that some money has been recovered and then might come forward? In what way do you publicize what has happened?

**Mr. Kivisto:** We have not been publishing a lot of program information for the public; we have committed to doing that, as the auditor recommended. Will it get down to the employer level? That's a question I can't answer today. We will be publishing the names of employers who have been prosecuted. That was brought in with the recent bill, so our intention is to make that public. There is a provision that allows us to do that. We need to be careful around privacy laws. We still have to

ensure we don't compromise that. So we will give program information publicly on the Intranet site about our enforcement activities—total charges and fines. Will it get down to the employer level? I'll have to get back to you.

**Ms. Martel:** I'd appreciate that. I noticed that yesterday, for the Ministry of Labour, you talked very publicly about a health and safety prosecution. The name of the employer is listed and all the information about what happened, including the fine: Lumsden Brothers Ltd., food wholesaler, was fined \$55,000 on March 1, 2005. I'd like to know if you can do this with ESA employers too.

**Mr. Kivisto:** Since March 1, when the legislation was put in place, we now have the legislative authority to do that, and we will be.

**Ms. Martel:** I know you said you were going to have some other stuff up on the Internet, and I noticed some information that has come out, jointly I think, between the Ministry of Labour and WSIB. It's got stop-work orders, work refusals, inspections by program area, investigations. I'm assuming it's that kind of format you're going to use to publish information about ESA violations. Am I correct? Can you give us some of the parameters you're going to be putting on the Internet?

**Mr. Kivisto:** I can tell you what we're putting on our Intranet site now, and much of that same information will go on to the Internet. We are putting in our claims investigation activities and the results of that. We're tracking monies collected. We're tracking prosecutions. All of our proactive inspections are being tracked. All of our statistical information on the program that shows what we are doing and what we are finding will be available on the Internet site once we've got our formatting and information flows figured out.

**Ms. Martel:** Would that include orders? Would it include contravention notices as well?

**Mr. Kivisto:** It will include all the statistical information.

**Ms. Martel:** And ticketing?

**Mr. Kivisto:** That as well.

**Ms. Martel:** When do you expect to have that available to the public?

**Mr. Kivisto:** I said "soon." The reason I said "soon" is that we need to sort out how we do it. You can publish information once, but you've got to get your processes behind the system to be able to keep the information accurate. It will be the next month or two.

**Ms. Martel:** The extended workplaces: Any luck on that, Brian?

**Mr. Lemire:** In 2004-05, to date, extended investigations, both a full audit and a test audit, which happens sometimes in larger workplaces: 489. In 2003-04, the full year: 692.

**Ms. Martel:** The auditor shows 802 for 2003-04.

**Mr. Lemire:** The total, also including our self-audit investigations, which are reviewed, once they're returned by the employer, by the officer: If I go back to 2004-05, it would be 566 to date and, yes, 802 for 2003-04.

**Ms. Martel:** So you've done less this year than last year?

**Mr. Lemire:** We've done less this year, but this information is as of February 18.

**Ms. Martel:** So there's going to be a big push on those by the end of the fiscal year to get it past 802?

**Mr. Kivisto:** It's left to the discretion of the employment standards officer in terms of determining when they extend the audit. Historically it varies from year to year a bit, but in the 5%, 10%, 15% range is what we're seeing.

**The Chair:** Ms. Martel, if you could put the question and finish for now, then I'll allow Mrs. Munro, because she has to leave.

**Ms. Martel:** If you want to start, Chair, because I have some more questions.

**The Chair:** Pardon?

**Ms. Martel:** If Mrs. Munro wants to start, that would be fine.

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**Mrs. Munro:** Thank you very much. I have a couple of questions I wanted to ask you. I think it's important for us to understand the rationale you've used for the proactive inspections and to understand where the sectors are that you've identified. I wondered if you could give us—I appreciate that it's perhaps premature—a sense of the impact the proactive inspections are having. It would seem to me, just intuitively, that, as the word spread, there would be a kind of reaction. I wondered if you could comment on that.

**Mr. Kivisto:** I can certainly talk about some of the successes. I've also heard some concerns from some employers. We know we've done 1,418 to date. We've had a lot of enforcement activity attached to that. There have been 931 employers inspected and 640 compliance orders. There have been 229 prosecutions. There has been money assessed and recovered, partly voluntarily by employers and partly as a result of the ministry's actions. We've recovered \$690,000 for workers.

We're still learning a little bit about how to do this better. There have been remarks made to me personally by officers who said some employers have thanked them. I've had some angry letters that have been directed our way, upset about what the ministry did, both in terms of the decisions made or the actions of the officer. I think, personally, that it's working well, but we need to refine our method of targeting. We need to finish that benchmarking exercise on the restaurant sector for compliance rates and start pushing hard at some of the other activities to improve compliance rates. I still think it's early days, but it's clearly a necessary component of our strategy and is important in terms of ensuring that the knowledge of employment rights and responsibilities for both workers and employers is raised, and at the same time that the laws are being followed.

**Mrs. Munro:** What kind of timeline would you have in mind in terms of making assessments on the success of doing this? You've identified some clear indicators in terms of this year's activity, but have you looked at other jurisdictions? Is there a way to look at this in terms of, in

two years or five years we should be seeing this kind of a number? Have you got those kinds of expectations identified?

**Mr. Kivisto:** Let me speak to start and then I'll ask Brian to contribute some of his research on other jurisdictions. From all the information I see from other jurisdictions—I talk to deputies from other jurisdictions twice a year, and also researchers in the business who look at contingent workers and issues—I think Ontario is at the forefront on many of the things we do in terms of proactive inspection. I think the challenges in Ontario are quite unique in terms of the size of our workforce, the nature of our workforce, and the ethnic, cultural and linguistic issues we have. We have some unique challenges that we need to wrestle down.

The compliance rate we've talked about is achieving an 80% compliance rate in specified sectors, so those 200 random inspections of the restaurant sector will help us establish what the compliance rate is now, whenever that may come out. We'll know in a couple of months when we've done the analysis. Then we will work really hard with the stakeholders and our staff to reach that 80% figure. I don't think it'll happen in a year, but it should be seeing progress in two to three years. It is a process where you need to do the work. We review everything we do as we proceed. In other words, as we put the centralized collections unit in place, as we put the proactive teams out, we'll launch it and then pull everybody in and say, "Look, what's happening? How are things working?" and institute best practices. So part of our process has to be engaging the staff and the managers who are delivering that service, hearing from stakeholders and refining what we do, with the objective of working hard for the outcome. Activity is important, but the outcome is getting the compliance rate up.

**Mrs. Munro:** Since you are primarily and initially a complaints-driven process, would you be able, then, to identify a change in the sources of complaints from the proactive activity?

**Mr. Kivisto:** I can give you the theory: If awareness is up with employers and increased with workers so they know their rights and responsibilities, if there's a strong enough deterrence for those who choose not to comply—so the people who want to learn and want to comply have information. For those who are not fulfilling their obligations, there is effective inspection, investigation, collections and enforcement activity so there's a strong deterrence. All those elements working together should see improved compliance and a decrease in complaints over time in the sectors that we're working hard on.

**Mrs. Munro:** Have you got a second list of high risk? In other words, when you have done these particular employee groups identified as your first tier, have you got a second tier ready?

**Mr. Kivisto:** The ones that Brian mentioned, where we had 80% non-compliance, are as good a place to start as any. We're piloting in the restaurant sector to get processes working and our strategies in place; we can mirror that in the other sectors as we move forward. So clearly,

unless the compliance patterns change quickly, which we will keep monitoring, I would say that the next sectors would be the ones we've identified as having the 80% non-compliance rate now.

**Mrs. Munro:** My final question deals with the issue of employer education. I wonder whether you would give us a comment here, because obviously in many cases these would be people who have relatively few employees. Is that a sector where there is a greater level of compliance or a reduced level of compliance? Is it an issue? I'm thinking of fewer than 10, for instance.

**Mr. Kivisto:** The question is by size?

**Mrs. Munro:** Yes.

**Mr. Kivisto:** Do we have enough differentiation that we understand the size? I think the point is that the larger the business, the more likely they are to hire an accountant and some other people who can help them understand the legislation and how it applies. That certainly helps. A sole proprietor may have much more of a challenge than someone who has enough capacity to bring in professional expertise as part of their business. I would think that that would be generally what we would expect to find.

There is no doubt, particularly in small businesses, that they have a lot of responsibilities, including complying with the law—not just the Employment Standards Act but many laws—and part of our job is to bring the important things to their attention in a way that they can understand, so they can act.

We have engaged some of the employer organizations in helping us determine that through the action group. We have the Canadian Federation of Independent Business at the table; we have the hospitality sector represented there. They are very interested in working with us to improve knowledge and awareness of employer groups, so I think using employer associations as much as possible to help drive change will make a difference.

We did launch the gateway. The gateway was about bringing information from various parts of government into one place that's easy. I know from when I was at the Ministry of Consumer and Business Services that 70% of businesses do most of their information gathering over the Internet. We had an organization that was called the Canada-Ontario Business Service Centre, a joint federal-provincial organization here in Ontario that delivers information to businesses. They started a call centre to provide information to business and they launched a Web site. It took a year or two, but 80% of the businesses were using the Internet for the information, not the call centre. Business people, if that pattern holds true, tend to like to find information when they have the time to do that, and often that's not during business hours, and they'll use the Internet extensively.

I think the workplace gateway, making Web services available that will support business and working with the employer associations to raise knowledge, is also another important strategy. For those businesses that still don't respond appropriately, then you need a strong ministry presence.

**Mrs. Munro:** I have noticed in your remarks about the workplace gateway—my question with regard to that is—it's difficult; you can track who goes there, but do you have a sense of a percentage? Are we missing a lot of people who should be getting those messages? I think that's really important as legislators, obviously, in terms of accountability. You can have something out there, but is it actually meeting the target audience, and is it meeting their needs? Do you have any sense of the effectiveness of this initiative?

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**Mr. Kivisto:** I know that on the gateway we've had 32,476 visits since October 2004, so there is traffic there, but is it meeting all the needs? Obviously not. I think the sessions with the Minister of Economic Development and Trade, where we're talking to entrepreneurs and explaining the legislation, are helpful. I think those brochures, the posters in plain language, anything we can do with organizations that interact with business is helpful. I think all government agencies, whether they're federal, provincial or municipal, have a real challenge in helping to package information in a way that's helpful to businesses, particularly those that don't have the infrastructure to fully understand that. We're part of that challenge, and I think we've got some good things going on.

Your questions are well-made. I think one thing we can consider down the road, as part of our activities, is doing surveys of employer knowledge and making sure they help to shape our information through feedback to us about the products we've produced so far.

**Mr. Jim Flaherty (Whitby-Ajax):** It's good to see you again, Deputy. When I was Minister of Labour in the last century, literally in the last century, it was a pleasure to work with you, and I'm happy to see that you're the Deputy Minister of Labour now.

A couple of things. What I hear in my constituency office generally about the ministry from people is about employment standards: "I've lost my job"; "I've been laid off"; "I've been fired"; "I've been downsized"—whatever—"I went to the local employment standards branch, and it's taking too long for them to deal with my claim." Usually they have a right to something like eight weeks of pay, and the employer is only paying them three or four, or not paying them. It's that kind of issue. It's not a huge sum of money, but it's an important sum of money for someone who has to make a mortgage payment or pay the rent. So my first question is directed toward that question of delay.

I was looking in your remarks. If I've got the right section, you said, at the bottom of page 5, "We have set a program target to render decisions on 80% of claims within 90 business days of receipt. The ministry is exceeding this target...." Am I in the right area for that type of issue?

**Mr. Kivisto:** Certainly, but I can give you maybe another sense. I've received phone calls from workers who have to pay bills and don't have their money, and they're obviously upset and rightfully so. Part of it is

driven by the legislation that allows appeal periods and other things. Part of it is the ministry's processes.

For the purposes of the committee, back in the early mid-1990s, we had an officer turnaround time of 90 to 94 days. We worked really hard to improve our processes, and it's down to about 37 to 40 days when an officer finishes a file. Is that good enough? Probably not. We have some instances, and I see the odd report, where an officer would make a decision the same day and it gets resolved the same day. As I said—I don't think you were here, Mr. Flaherty—in 80% to 85% of the cases, when the ministry intervenes, the employer and the worker settle the money that's owed, either in full or in part, and that happens very quickly.

What takes time is when there is a dispute that doesn't get resolved. Then we do the full investigation, and orders are issued. They could be appealed, and if they're appealed, you've got to wait on the appeal process and a decision by the OLRB. If there's still money owed, then we get into a collections process. Unfortunately, due sometimes to difficulty in reaching agreement on the monies owed, sometimes because we just need to pursue the collections process, it can be quite some time before an employee might get the wages.

We're working hard to streamline our activities, both in terms of our claims intake and management and our collections activities speed, as much as possible. At the same time, understand that it is a serious concern, particularly for the workers and families who are affected by that.

**Mr. Flaherty:** On the issue of collections, the auditor had specific concerns about collecting for claimants. Historically, the auditor noted that since 1998, up to three collections agencies have been used to collect overdue orders to pay. I was reading your remarks, Deputy, about a new, centralized collections unit in central region, which has the majority of the work in the province. How are the collections being done now, in terms of the ministry's work and work done by outside contractors, if any?

**Mr. Kivisto:** The change that we've made, with the establishment of the centralized unit in the central region, is that we put more rigour into making sure that the information that goes to the collections agency is accurate and complete, because if you don't give them good information, they have difficulty doing their work. That has improved substantially.

At the same time, the collections agency will make a certain amount of effort to collect monies, but on some of their files they either have difficulty or don't put as much effort in as we'd like them to, based on the business model and the contract we have with them. The centralized unit receives all the files back and goes rigorously through those files to make sure we've done everything possible. It takes action to pursue those monies. I've reported in my speaking notes that they've collected, since July 2003, another \$2.3 million based on activity. We think it's having a marked improvement.

So there's a combination of the ministry doing good-quality work leading up to the collections activity, both

in claims investigation and in making sure the file's complete, watching the collections agency carefully, ensuring that they're fulfilling their contract with us, and then us taking all the files that come from there and working hard to pursue every other possible avenue that they haven't taken. It seems to be having a much better outcome in terms of that.

I also made the comment in my notes that the best jurisdictions in Canada are running a 20% to 35% collections rate, but that's not good enough. I think we can and must reach that, but collections across all of government and in other jurisdictions is a real challenge. We continue to look at other jurisdictions. We're talking to other ministries that have a collections function in the Ontario government, because there are some best practices there and things I'm sure we can do to improve success for all the collections activities across government.

At the end of the day, you need to do what you can as efficiently as possible to get monies in the hands of workers when they're owed, understanding that at times there's nothing that's possible. There are companies that are just insolvent; there are no assets, and that's what you find after a long process. Brian explained that a few minutes ago, and that's the reality. There's a problem with the federal bankruptcy legislation, in the case of insolvencies, where workers don't have the same priority as secure creditors, so we continue to pressure the federal government to consider amending that federal statute to recognize that issue.

**Mr. Flaherty:** Finally, on the percentages, you mentioned the best in Canada—I guess it's Alberta—at 20% to 35%. Where is the Ministry of Labour in Ontario now, in terms of percentages, given the collection of \$2.3 million?

**Mr. Kivisto:** I'll give you a couple of numbers, and then Brian can correct me if I'm wrong. The collections agency is now collecting 18%. The ministry was taking it into our central collections unit, and that collected \$2.3 million since July 2003. I think it has roughly doubled what the collections agency achieved in that time frame, so the math tells me that we're approaching the Alberta benchmark at this time.

**Mr. Flaherty:** Is that the goal?

**Mr. Kivisto:** The goal would be to get 100%, if possible, but understanding that we do have insolvencies and other things, the goal is to be better than other jurisdictions, sure—at least the best we can be, and we're not there yet.

**Mr. Flaherty:** Better than Alberta, I hope.

**The Chair:** Thank you, Mr. Flaherty. Other questions?

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**Mr. Bill Mauro (Thunder Bay—Atikokan):** There was an indication earlier that the dramatic increase in the number of proactive investigations is a good thing. I think everybody would agree. However the numbers were manipulated in such a way as to try to portray it, it still represents a very small percentage of all the employers who are being investigated in the province, which

I suppose, if you look at it in its totality, is accurate. I would imagine that most of those proactive investigations are being targeted at what you consider to be the high-risk. Maybe you can recharacterize it for me in terms of the increase in percentages targeted at the high-risk. Do you have any of that kind of data?

**Mr. Kivisto:** We can certainly give you what we have. You're absolutely right, Mr. Mauro, that we'll never have the kind of capacity to be in every workplace every day. That's not the goal. The goal is to provide knowledge and information to employers so they know their obligations and their rights and they fulfill those, and then to use the information the ministry has to target its activities where there is high risk. We've done that. We have committed to a significant number of proactive inspections: 2,000. They're focused on those sectors and repeat offenders. Repeat offenders are people who have multiple claims of overtime.

I think we will re-evaluate how we're making out in terms of achieving higher compliance rates. I suspect that, over time, as we are successful in achieving better compliance rates, we'll be able to take more of the resources we have on the reactive side of the business and work the proactive side.

**Mr. Mauro:** My point is that even though 1,200 or 1,400 proactive investigations might only represent less than 1% of the total employers in the province, it might represent 5% or 10% of the total high-risk employers in the province, and you would agree.

What we leverage from that kind of initiative would be—and I don't know if you've had enough time yet to have analyzed this data or if it's available—that there will be a corresponding decrease in the number of complaints that you're going to receive. Can you speak to that, or is it too soon to know that that proactive initiative is leading to, I would hope, a significant decrease in the number of complaints that you're receiving from the high-risk sector?

**Mr. Kivisto:** As I talked about the high-risk targeting, and in particular the restaurant sector, I talked about us taking 200 random inspections in that sector—not just looking for repeat offenders—to establish whatever the compliance rate is. It may be 30%; it may be 70%. We set a goal that we're going to achieve 80% compliance in that sector over time, so we will then evaluate our information about what kind of contraventions are taking place. We'll communicate with restaurants, with employers and workers in that sector, and achieve the kind of compliance rate that would be indicative that the workers are treated fairly.

It is early days yet. We don't have the results of the proactives to tell you what the compliance rate is today, but we will have, in the next month or two. Then we'll launch our strategies to deal with this so that that sector falls off our complaint list and we can focus on others.

**Mr. Mauro:** This increase in the proactive investigations has been over the last 12 months or so. In that 12-month period, you would historically have received X number of complaints. You can't tell me, in the past 12

months, how many complaints you've received yet, if it's gone down or up?

**Mr. Kivisto:** No, and I would think it's too soon. Having launched the proactives in July of last year, I think we need a bit more time.

**Mr. Mauro:** OK. Fair enough.

There is indicated in the report that there was an internal collections function report coming. It's not here yet. Do we know why it's not here or if it's still coming? In the auditor's report there is reference that in 2003 a report was requested or was underway on the internal collections function.

**Mr. Kivisto:** Perhaps I can clarify. We had launched an internal review of the collections function a couple of years ago, recognizing that we weren't satisfied that all was being done. That report was completed in February, and we've taken the information from there to improve our process within the centralized collections unit. So the review was completed, and it helped inform our practices that we're following now. I think it's part of the reason why we've done a little bit better through the centralized unit.

**Mr. Mauro:** Was 1998 the year we went to privatized collections?

**Mr. Kivisto:** The contract with the three collection agencies—I'll ask Brian to look that up, but I think that's roughly the time.

**Mr. Mauro:** Close enough.

I'm curious if you have any way to sort of analyze the net on the financial side. Clearly there's an administrative cost to pursuing things when it's in-house, and there's a cost associated with the collection agencies. Do you have thoughts or information or data, from a fiscal perspective, on what's the best approach to take, why Alberta was doing better and what their more stringent requirements are that seem to lead to a higher success rate?

**Mr. Kivisto:** I think we need to be doing cost-effective, efficient collections, and having a mixture of public and private activity makes sense. The collections agencies externally have good techniques and tools for certain kinds of collections activity, and they're pretty efficient at it. They're achieving an 18% collections rate in the last year. At the same time, the ministry also has some capabilities, and we've learned, through that centralized collections unit, that they've been quite successful.

**Mr. Mauro:** You said that 80% to 85% are settled between the officer and the employer. When we get to that point—the other 15%—do we still administratively pursue it to some degree before it's turned over to a—

*Interjection.*

**Mr. Mauro:** You do. OK.

I guess my last question would be about this quick turnaround time that is referenced. I can understand how that would be important from the employee perspective, if they're owed money, but does it also militate against the number of prosecutions you're willing to go to the wall on? Is there an inclination within the ministry to sometimes achieve a turnaround target? I'm thinking that

the employer may sometimes benefit from our attempt to achieve a quick turnaround time, if you understand my point.

**Mr. Kivisto:** Let me see if I do by giving you an answer, and perhaps you can clarify the question. It's important, for a couple of reasons, that the ministry be as efficient as possible in its handling of claims intake and investigation, for a couple of reasons. There's uncertainty, both on the part of the worker and the employer, about what needs to happen. As well, if there's money owed, then the sooner that's resolved and collected, the better. I would tend to think that the older the file, the information gets stale and is more difficult to investigate—that's been my past experience—because the memories of workers and employers aren't the same, and sometimes the records are harder to retrieve. So timely investigations are important from a perspective of helping resolve the dispute between the worker and the employer, and at the same time, ensuring that businesses that haven't given attention to employment standards issues understand that the government is serious, and developing a reputation that when the ministry comes in, they mean business and will get the job done, will help create an incentive for better compliance.

**Mr. Mauro:** Is the entire cost of the prosecution borne by the ministry, or, if you're successful in court, is there a mechanism to apply some of your costs against the employer?

**Mr. Kivisto:** There are two kinds of monetary penalties, if you like, that we have in place. One is a notice of contravention and the other is prosecution by way of part I or part III. When you pursue prosecution by part I and part III, the fines are paid to the municipalities. The municipalities run the courts, and the fines help pay for the administration of the courts. There's a surcharge put on top, and that is returned to the provincial government. On notices of contravention, the money accrues to the provincial government.

**The Chair:** I'm going to go to Ms. Martel in a moment, but could I just ask one question related to your proactive inspections? There are 1,400-plus that we've done this fiscal year, and I think you said there were almost 1,000 firms involved with those 1,400 and you're targeting the high-risk areas. How many of those 970 or 1,000 employers did not have any problems? In other words, how many were good employers? About 200?

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**Mr. Kivisto:** Out of the 931, how many employers did we find in contravention? I think Brian gave a rough estimate that he thought it was higher than 70% where there's a problem.

**The Chair:** So that means that there are 30% on the other end. Do we do anything for those employers that are really good employers? Do we give them some kind of acknowledgement, and what is that acknowledgement?

**Mr. Kivisto:** I'll turn that question over to Brian.

**Mr. Lemire:** When we conduct an audit and we find out that there are no violations, we do a couple of things. Where there might be some lack of knowledge on the

part of the employer—there hasn't been a violation, but in discussions with the employer it becomes apparent that they're not quite sure what particular provisions mean and how they're applied; they haven't necessarily violated this, but they have questions—we provide information by way of materials, and we educate them to some degree. We leave, with every employer we visit, a CD that has on it all our fact sheets and all our information with respect to policies and procedures, as well as a self-audit tool that they can use to do a check themselves in the future.

**The Chair:** I guess I'm not making myself clear. In times past, we've had ISO 9000, ISO whatever, in terms of environmental management etc. Particularly when you're going into high-risk areas where they're competitors, if it's a 70% non-compliance rate, many of their competitors are not living up to our employment standards. I just feel that the ministry should reward, in some way, those people who are operating in a field where their competitors aren't meeting the standard and they are going the extra step and are meeting their standards or may even be exceeding their standards. There should be some acknowledgement by the ministry—maybe a plaque or something that they can put in their waiting room when people are coming to apply for a job there—that this is a class A1 employer in terms of what they're doing.

**Mr. Kivisto:** That's an interesting idea, and it's certainly worth pursuing. There has been some discussion within the public service about an enforcement strategy that looks at high performers and how we can promote that kind of good practice and recognize it. I think that's something that we should go back and think about a little bit. It kind of reminds me of what you see when you go to a restaurant and you've got the yellow and the green and the red. I certainly look at those every time I walk in a door, and it'll be a factor in whether I'm going to come back.

In theory, if we were able to do that well with the issue of employment standards—for example, if a worker was thinking of working somewhere, if they knew what the rating of that workplace was, it may be a factor in whether they choose to work there or not. So on the one hand, publishing results of prosecutions and other stuff will inform them on the negative side, but it would be nice to see something on the positive side. Thank you for the idea.

**The Chair:** I think Ms. Martel has about 20 minutes. Just for staff purposes, we'll probably be about another 30 minutes in total.

**Ms. Martel:** I'm going to go from employers that the Chair would like to acknowledge to an employer whose information is correct—and I have no reason to doubt that it is not correct—a deadbeat employer whom I really wish the ministry would get all over and get this issue resolved. I wasn't going to raise this, but in light of what the Chair just did, I think I've got to raise the flip side of what we really should be doing.

Beautiful South, owned by Scott MacDonald and David Buck, a Toronto garment manufacturer: The first

employee was owed \$6,000 in wages when she went to the Ministry of Labour in March 2003 for help. She doesn't have her money yet. In the meantime, after that, another five employees were forced to quit in May 2004. They are owed over \$30,000 in unpaid wages and statutory benefits.

To date, this is what the ministry has tried to do, after a lot of pressure from TOFFE, who is representing these unorganized workers: "The ministry has filed writs with the sheriff's office in October 2004 but has not yet ordered the sheriff's office to seize and sell any assets of the company or its directors." The ministry informed TOFFE that they must be sure that "seizure and sale will result in the recovery of wages for the workers and not a loss for the ministry. According to Beautiful South workers, the company owns many expensive embroidery and sewing machines" that could obviously be seized and sold to bring in the money to pay for the wages. That's the first action that could be taken. You're going to correct me if I'm wrong, but it doesn't look like any action has been taken on the writs.

The second action: I gather that the Ministry of Labour, after getting information from TOFFE about some of the clients of Beautiful South, told Beautiful South clients to pay the ministry now and in the future. I'm under the understanding that even though the clients were identified and they are certainly in a position to pay, this money is not being directed to the ministry.

The third action had to do with seizing money from the accounts of the owners themselves. I gather that the banks told the ministry that all the accounts were overdrawn or subsequently closed. But TOFFE knows, and so do the workers, that Beautiful South continues to operate and do a steady business. So I don't know where they're hiding their money.

You can answer me now, or you can answer the committee later, but it would be really useful to know what's happening in this case. There's about \$36,000 now owed to workers, a very classic case of what one can only describe as a deadbeat employer who makes everybody look bad. I have no reason to believe that the facts are not correct as they've been given to me. I don't know if you want to respond now, Deputy, or if you want to get back to the committee about what the ministry is going to do to finally get these workers what they're owed.

**Mr. Kivisto:** I can certainly comment a little bit on that matter. There are a couple of handfuls of specific cases that I have a personal interest in, that being one of them. I am being updated every two weeks on everything we're doing with respect to that file and other files. There are certainly some very difficult cases and some very unfair cases in terms of workers. The ministry's job is to do everything it possibly can do. My goal in reviewing those files is just to elevate in the organization—to ensure that if there's something that's legally possible to do, we're pursuing it. I'll be happy to have someone talk to you, aside from that, on that specific file in terms of the current status.

We also have engaged TOFFE and other groups on specific files. They've been very helpful in giving us information. In some cases, it has been tremendously helpful, and we've had some success. In others, it just continues to frustrate both the ministry and workers who are owed monies.

**Ms. Martel:** Can you at least tell the committee if this company is still operating?

**Mr. Kivisto:** I see a nodding head behind me; that's "yes."

**Ms. Martel:** I'd appreciate, certainly, getting an update on how come they're still operating and people are still owed money, especially that kind of money. There's something wrong here.

Let me ask a couple of other questions, then. I think you said earlier that the 1,400 inspections have resulted in a total of \$905,000 being assessed, and the recovery rate is 76%. So I guess about \$215,000 is still owing from those inspections; that's money still owing to employees. Is that correct?

**Mr. Kivisto:** That would be the situation at this time.

**Ms. Martel:** And how much time are you giving these employers to get this money in to the ministry?

**Mr. Lemire:** Once the investigation is complete and the decision is rendered to the employer, the employer has five days to provide the money to the ministry or an order to pay will be issued. When the order to pay is issued, there's a 30-day appeal period. Following that appeal period, within five days the file is sent to the centralized collection group for pursuance of collection activities and the collection agency.

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**Ms. Martel:** Is there any other action you can take? I'm assuming all these employers are operating, because it was a most recent inspection, so there shouldn't be an issue that they've gone bankrupt and you can't collect. Instead of it going to the collection agency, what about some of the enforcement tools you have that are listed in the auditor's report—the notice of contravention etc.?

**Mr. Lemire:** The notice of contravention is an administrative monetary penalty. That doesn't put the money back in the hands of the worker; that's a penalty. Similarly, the tickets and the prosecutions, unless directed by the court, don't put money back in the hands of the worker. The primary tools for actually getting money that we can provide to the worker is through recovering bank account monies, through the writs and through third-party demands placed through the bank.

**Mr. Kivisto:** But we will clearly follow enforcement activity beyond trying to get the money. We do two things: We issue directorate orders and we initiate either a notice of contravention or a prosecution for non-compliance with an order. So we have a parallel track: the collections activity that Brian talked about and the enforcement activity where there's non-compliance with orders of the ministry or repeat offences. So on the proactive inspections you'll see both happening.

**Ms. Martel:** Should I assume that of the balance, where there's money owing, in those cases there is

proactive enforcement happening right now, that you're using directors' orders; that you're talking to them about prosecution—at least in the most current ones, where you know they're operating; that you're getting on top of them?

**Mr. Lemire:** Every file that goes through this centralized unit where an order to pay has not been satisfied is reviewed for the potential for directors' orders, if there's a corporation that has directors listed. Writs are filed in the courts, and they're pursuing possible section 4-related companies to see whether there's another organization that could be held accountable for that.

**Ms. Martel:** Can you tell me about the 229 prosecutions since July? How many of those would have been repeat violators of the act? Do you have that information?

**Mr. Kivisto:** I probably don't have that information with us. None of us have it today, but the fact is that some of the proactive inspections, a portion of them, are targeted to repeat offenders, so then a portion of these would be related to just that circumstance.

**Ms. Martel:** Could you get that information for us? That would be great.

Of the 309 notices of contravention—I understand those are administrative penalties and the money would be going to the consolidated revenue fund—what was the monetary value of those 309 notices?

**Mr. Lemire:** I can tell you that most of them would be the first offence, which is \$250. I believe there may have been some that were a second offence, but to give you an approximate value, it would be the \$250 times 300.

**Ms. Martel:** Of the inspections that you did, how many orders were issued?

**Mr. Lemire:** Of the inspections we've done to date, we've issued 640 compliance orders, 111 orders to pay wages, and four directors' orders to pay. This is by the inspection team, not the team that would pursue the file if the orders were unfulfilled, who also look at directors' orders. The dedicated team issued 87 notices of contravention. The other notices of contravention would have come through the investigation of claims.

**Ms. Martel:** OK, I understand that. A couple of other questions. Can you tell me the value of the fines associated with the 229 prosecutions?

**Mr. Kivisto:** They've been launched; that doesn't mean to say they've been completed through the court process, so we won't be able to give you that information until the court process is complete.

**Ms. Martel:** Until what process is complete?

**Mr. Kivisto:** Until they're finished with the courts. In other words, there are 229 prosecutions initiated.

**Ms. Martel:** Most of them would be at the starting stage, then? There are very few that have been—

**Mr. Kivisto:** They're at various stages.

**Ms. Martel:** There was a suggestion from the auditor that the ministry should consider assessing employers for some of the costs around inspections as a mechanism both to act as a deterrent but also to gather some in-

creased funding—if the money was targeted, obviously—to allow the ministry to do more inspections. Can I ask what's happening with that recommendation, if anything?

**Mr. Kivisto:** We certainly looked at that recommendation and we've looked at the other jurisdictions who have that capability. What we discovered in British Columbia was, although they have the law, they've never used it. They found there were some real complications with putting it into effect. We think that we need to finish moving forward with the current initiatives on enforcement—in particular, pushing the targeted inspections and the other enforcement activity—and then review where we are at that point in time and decide whether or not that's something that we need to bring forward to the government. So at this stage, it's not the top issue on our table.

**Ms. Martel:** I wanted to ask about a commitment that the minister made almost a year ago, on April 15, 2004. This was after there were a number of immigrant workers who were at Queen's Park at a press conference with cheques that had bounced from their employers. The minister said at that time—this is a Canadian Press story: "Labour Minister Chris Bentley said Thursday the government is preparing legislation this spring"—that would have been spring 2004—"that will give the ministry more teeth in enforcing employment standards across Ontario." He also said, "'We're going to change the dial on enforcement in this province,' said Bentley, who expects to have more details in the next few weeks."

Can you tell me where the legislation is?

**Mr. Kivisto:** The government came forward with a schedule of offences for the ticketing piece in and around that time. Perhaps that's what the minister was thinking. As well, the more recent legislation creates the capability for the minister to publish the names of organizations that have been prosecuted. That's the second element, perhaps.

**Ms. Martel:** That's it? Even when you do ticketing, your money goes to the municipality. It can't even go back to help you do more inspections because it's a provincial offence. I would argue that if you were really tough on the other measures that you already have in enforcement, you may not have needed the ticketing. If you were really getting on top of people with respect to administrative fines, with the notices of contravention and scaling up to \$1,000 for repeat offenders, if you went at those repeat offenders with respect to fines—up to \$50,000 and 12 months in jail. There are lots of enforcement tools at your disposal. I'm not sure what the ticketing does to really deter anybody, and I'm not sure how useful it's been, when I think you already had in place a lot of enforcement mechanisms that really needed to be put into place by ES inspectors. From your perspective, there's no other legislation that's being worked on internally that would address some of these issues? The minister was really clear: He said "legislation," and he said it more than once, in terms of this particular press story.

**Mr. Kivisto:** The enforcement approach of the ministry changed dramatically. The introduction of tickets was one additional tool that the employment standards officers have. The number of prosecutions that have been initiated, both through part I and part III, are 229 versus 18 in the previous five years. I know, from talking to employment standards officers who are on the dedicated team in the field, that they issued a ticket for a poster, in one circumstance, and suddenly all the posters disappeared out of the ministry inventory in that location. So they did seem to have an impact within the business community and that geography.

I think we need to continue to monitor how effective the various tools are. There's a place for notices of contravention. There's a place for tickets. There's a place for an order. There's a place for a part III prosecution, which has the more severe fines and penalties, including imprisonment. We need to pursue all of those, as appropriate in the circumstance. We now have, I think, a good suite of enforcement tools available to employment standards officers.

We put a new prosecution policy in place to make it absolutely clear to ESOs when they had to consider prosecution. A lot of the discretion, as much as was reasonable and possible, was taken out so that there's a clear message that part of the job is not just chasing money for workers; it's also holding employers accountable, through the courts and through other means, for fulfilling obligations. Having prosecutions through other means in place allows you to track repeat offenders through the court process so that if you show up with a repeat offender down the road, you have a history behind that employer. I think that's very powerful in terms of the court deciding how they'll choose to deal with the matter.

I think we now have a pretty good mirror between what we do in health and safety and what we're doing in employment standards. We are still in the midst of continuing to train the rest of our employment standards officers. We've got the dedicated team fully trained in some of these tools, and over the next few months, as that takes place, we'll see a continued increase in effective enforcement measures targeted by the ministry to repeat offenders and serious offences. I think we need to see how that plays out, to see if anything more is needed.

1140

**Ms. Broten:** I wanted to touch on the issue where the auditor had concerns about measuring and reporting on program effectiveness. I know you made mention in your opening comments about implementing some new programs in that regard. Certainly that's an area of significant importance for this committee: making sure of value for government dollars and effectiveness of programs. What I'm wondering is when information will be available that could be provided to this committee to start having a baseline measurement against which we can look at progress or non-progress in terms of where compliance rates are going in the province.

**Mr. Kivisto:** I agree that having that information published will be extremely helpful. We will be completing

the work on targeting the 200 random inspections in the restaurant sector in the next month or so, and then analyzing those results. Then we'll publish the compliance rate for that sector. At the same time, I've indicated that we're already producing information internally, on the ministry Intranet site, for staff on our enforcement activity, our proactive inspections and our collections activity. Within the next month or two, that'll be made public. I would think that within the next couple of months you'll start seeing a better understanding of what the ministry is doing, the kind of results it's achieving in terms of outputs from activity, and also how we're making progress on the compliance rate in those sectors we targeted. We're well on the way to being able to make that transparent.

It's important that it be transparent, and it's important that you capture, as the auditor pointed out, that it's not just about claims investigation times; it is about achieving outcomes and making information about the work the ministry's doing public, so that any interested stakeholder, including this committee, can see that the ministry is working hard on delivering on its commitments, and that it's having the kind of impact it needs to have for the resources that are invested in the ministry.

**Ms. Broten:** What are the plans and timelines with respect to the expansion of the pilot project, if any?

**Mr. Kivisto:** The pilot project on the central collections unit? Was that the question?

**Ms. Broten:** In terms of the measuring and reporting programs, the new measures that were put in place in July, you've indicated with respect to the restaurant sector. I'm wondering, is there a phase-in plan in place as to moving into other sectors? Where would you see this program four years from now?

**Mr. Kivisto:** Four years from now I would think that we would have dealt with and launched initiatives in the three poorest sectors. We have been well along the way in ensuring that workers and employers knew what they needed to do, knew the most recent contraventions, and had information and help. We had an improvement in terms of what we see through our proactive inspections. We'll see a reduction in claims. Obviously, if the restaurant sector is the first, we'll see compliance rates starting to improve there from whatever we're finding out in a month when we analyze it. We'll do public reporting on that through our results-based plan.

**Ms. Broten:** Did you have anything you wanted to add?

**Mr. Lemire:** Perhaps just to augment the fact that the targeted sectors we're currently looking at compose 90% of the areas where we're getting claims. We will look at whether we need to bring in other new sectors, but we first of all are focusing on those sectors representing 90% of where we think the issues are. We'll be establishing the baseline compliance in the restaurant sector this year, looking at activities that will help raise that.

The other sector that we have continually been involved in, and will continue to work in, is the garment sector here in the GTA.

**Ms. Broten:** Thank you.

**The Chair:** I think that brings a close to the questioning. David, do you have anything else you need to clear up?

**Mr. David McIver:** No; I think we're OK.

**The Chair:** Thank you very much. We appreciate your appearance here in front of the committee. We'll probably issue our report sometime in May, hopefully, as we get going down the road.

With regard to the information which Ms. Martel asked for, if you would direct that to the committee, we can share it with all members of the committee.

**Mr. Kivisto:** We'll do that. Thank you.

**The Chair:** Members of the committee, we have lunch in the next room if you want to get a sandwich, and then we'll reconvene after and have our in-camera session to talk about and give direction to our researcher with regard to writing the report.

We will recess for, let's say, five or 10 minutes.

*The committee recessed from 1146 to 1153.*

**The Chair:** I believe it's the wish of the committee to go in camera; therefore, we will adjourn the formal part of our hearings. Agreed? Thank you.

*The committee continued in closed session at 1153.*



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First Session, 38<sup>th</sup> Parliament

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Thursday 31 March 2005

**Standing committee on  
public accounts**

2004 Annual Report,  
Provincial Auditor:  
Ministry of Transportation

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

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## LEGISLATIVE ASSEMBLY OF ONTARIO

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STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Thursday 31 March 2005

Jeudi 31 mars 2005

*The committee met at 0935 in room 1, following a closed session.*

2004 ANNUAL REPORT,  
PROVINCIAL AUDITOR

## MINISTRY OF TRANSPORTATION

Consideration of section 3.14, maintenance of the provincial highway system.

**The Chair (Mr. Norman W. Sterling):** Welcome to the committee. The committee will be sitting until 1 o'clock, and then we will sit after question period, if necessary. It hasn't been necessary to date, and I wouldn't anticipate that to be the case today, but who knows where it will go. Deputy Rafi, do you want to introduce those people who are with you? Perhaps just Carl, who is sitting with you. If you require the input of other people, you can introduce them as they come forward. If you have some opening remarks, we'd invite you to give those now.

**Mr. Saäd Rafi:** Thank you, Chair. First off, good morning, Mr. Chair and members of the standing committee on public accounts. As the Chair has mentioned, my name's Saäd Rafi. I'm the deputy minister of transportation. To my left is Carl Hennum, our assistant deputy minister of the provincial highway management division. We have four staff with us who, as the Chair suggests, I will introduce if we require their assistance. I'd like to thank you for this opportunity to discuss the Auditor General's report and our responses and improvements associated with it. I'd also like to thank the Auditor General for his many positive recommendations, which will help us achieve, I think, many more higher levels of performance in the ministry and for the highway corridor.

The Auditor General recognized the progress that has been made in improving maintenance procedures since 1999, when the last provincial audit was done in this area. This process has allowed us to examine how we can continue to improve the cost efficiency and effectiveness of our maintenance measures while ensuring our highways and bridges are safe and well maintained. We take these recommendations very seriously, and I'm pleased to report that we're taking action on or have already implemented all of the report's recommendations.

Our ultimate goal is to make Ontario roads safer. According to the latest Ontario Road Safety Annual

Report, we have the safest roads in North America. However, we're committed to continually improving on our record. Our ministry is a recognized leader in highway management practices, and a number of other jurisdictions come here to learn from us. Nevertheless, we are continually striving to improve our performance by providing leading-edge maintenance technology and developing a world-class and cost-efficient asset management framework.

This morning I'd like to focus my remarks on three key areas: the managing of maintenance contracts, measuring and reporting on performance, and asset management. I'll begin with managing maintenance contracts.

The Auditor General's report recommends that in order to manage maintenance contracts more effectively, the ministry should provide coordinators with more specific guidelines so they can perform their inspections more effectively. I'd like to thank the auditor for this recommendation, which highlights something that we take very seriously: our stewardship of a vital provincial asset and the importance of monitoring the quality of our contractors' work.

The ministry has detailed guidelines for our coordinators to provide direction for consistent and unbiased monitoring. Contract administrators undergo a comprehensive training program, and a refresher course for contract monitors is currently under development to provide updated instruction on new and revised processes. But as the auditor has correctly pointed out, the ministry needs to and will work toward continually improving its ability to manage maintenance contractors by making inspection guidelines more specific. We are currently reviewing our monitoring priorities, frequency, documentation and the reporting of our results. Methods made possible by advanced technology will also be examined and the results of this review will be incorporated into an update of our monitoring manual, and also into the maintenance contract administrator refresher courses that we provide. We expect this work to be completed by March of next year.

The auditor also recommended that the ministry implement systems for managing and analyzing data for inspections, violations, complaints and claims for damages by highway users, along with the service levels that we achieve. We thank the auditor for this timely recommendation, as new technology and systems for managing and analyzing data are now becoming avail-

able to us. For the past two years, we've been actively conducting field trials of a global positioning system, or GPS, and Internet-enabled mobile electronic diaries that were referred to in the auditor's report to record and provide key information to contract administrators.

**0940**

Our commitment is to making Ontario's roads even safer, despite the fact that traffic volumes have continued to increase. For example, traffic on our provincial highways increased by over 5.3 billion vehicle kilometres between 1998 and 2002, yet the number of fatalities per 10,000 licensed drivers declined by 6.3%. We're very proud of that.

In his report, the auditor also recommended that MTO take such steps as reviewing regional procedures and records to ensure fairness and consistency across the province of the sanctions we applied to contractors for violations. I want to thank the auditor for his recommendation on this important issue. We take the matter of violations extremely seriously, and so do our contractors, as it affects their ability to secure future work.

We are proud of our contractors and the work they do, both in their consistency of delivery and in their adherence to standards. Our contract administrators are trained in dealing with non-conformance and the imposition of sanctions. If a contractor fails to meet the terms of a contract, we have a protocol in place that provides clear direction on how sanctions are to be applied, and potential sanctions are set out in the language of each contract. Regional management then reviews the appropriateness of the sanction and, finally, head office staff are available for consultation if the violation is unusual or indeed complicated.

Currently, the ministry uses data from a variety of sources to establish inspection frequencies and monitor contract performance. We have a database of contract violations that is updated every month, and we are actively exploring ways to ensure consistency across the province in both our procedures and our decisions. In addition, to respond to the recommendation, we are implementing a centralized database to continuously track sanctions and create review processes, including a more formalized head office role. This additional review will strengthen provincial consistency and fairness in applying our sanctions.

I'd like to move now to measuring and reporting on performance, beginning with the impact of salt use on our environment, a very critical issue. The Auditor General recommended that in order to identify and better manage the impact of salt use in our environment, the ministry should take the necessary steps to properly monitor salt use and work with the Ministry of the Environment to establish ongoing testing and tracking of the impact of salt. Our environmental responsibility is important to us. We're constantly working to refine our technology and to better monitor salt use. Ontario is recognized as a national leader in salt management best practices and has actively participated in the Environ-

ment Canada multi-stakeholder working group on this very subject.

We're always looking at new winter maintenance technologies that will help us improve salt management and safety, such as the development and implementation of automatic vehicle location systems, or AVL. AVL provides real-time, accurate information, such as the location of our plows and our spreaders and the amount of salt they put down on the highway. We are continuing to refine this AVL technology, and we are developing a system of automated reports that will help improve salt use monitoring, as recommended. In addition to AVL technology, we have deployed something called ARWIS, which is the advanced road weather information system, now for several years. This allows for computerized spreader controls, the pre-wetting of various mixtures that are applied to the highway and infrared thermometers to ensure that the appropriate amount of salt is applied, therefore benefiting the environment. Lastly, we are working with the Ministry of the Environment on a new environmental monitoring project, which is intended to demonstrate the impact of reduced salt use. This is to be completed in the fall of this year.

The ministry and the auditor both recognize the need to provide the most efficient and effective delivery of highway services. The ministry agrees with the auditor that in order to make the best use of funds, our prioritization process should allow preservation and prevention methods to compete with all other projects for funding based on a full cost-benefit analysis. To this end, we are currently implementing the asset management business framework, which will allow for a more consistent means to prioritize all our highway investments. We have shown leadership amongst North American transportation agencies in the development of this very framework.

With this implementation, we can apply a consistent and very long-term view for highway management. This framework allows us to make the right investments in the right place at the right time. It encompasses all infrastructure assets and all phases of the investment cycle, from planning to construction to maintenance. This will help us improve the condition of our highway infrastructure and deliver greater cost efficiencies, along with increased justification for the dollars spent. Additionally, it provides timely and reliable information and greater public accountability. We're moving away from a "worst first" approach to a full-life-cycle costing approach in rehabilitating our highways. This allows flexibility in the treatment of assets. Less expensive treatments can be applied and used in rehabilitation earlier, thereby reducing the overall cost and extending the life of the pavement.

The ministry has concentrated expertise and effort in this area for a number of years, developing and implementing world-class technical analysis and tools for highway management. In his report, the Auditor General also recommended that the bridge management system should contain complete and accurate information, in-

cluding details of recent structural maintenance work, and that key aspects of each structure must be inspected.

It is noteworthy that the Canadian highway bridge design code is based on the Ontario highway bridge design code, which was developed by the ministry. In addition, Quebec, Nova Scotia and Saskatchewan use the Ontario structure inspection manual for bridge and culvert inspections. We're understandably proud of that. We provide this bridge management system, or BMS, to Ontario municipalities through the Ontario Good Roads Association at no cost to them. The city of Toronto is currently in the process of implementing this very system.

While we are confident in the reliability of the BMS, we agree with the importance of continually improving our processes. We're currently reviewing the data in this system to modify it to address the report's recommendations. It was recommended that the BMS automatically generate a report on all overdue bridge inspections. We are currently modifying the system to ensure that a notification flag, if inspection reports are not filed every two years, comes to our attention.

We remain totally committed to working with our municipal colleagues and providing them with the tools, such as the bridge management system, to help them improve management of their roads and bridges. The ministry has led the establishment of a joint working group, made up of the Ontario Good Roads Association, who represent approximately 90% of Ontario municipalities, and the Ministries of Public Infrastructure Renewal and Municipal Affairs and Housing, to create a municipal asset management database for roads and bridges.

We also continue to make municipalities aware of their bridge inspection responsibilities through federal-provincial funding programs such as the previous Ontario small town and rural infrastructure fund, also known as OSTAR, and, most recently, under the Canada-Ontario municipal-rural infrastructure fund, known as COMRIF. Under COMRIF, a request for information is included in the application, asking municipalities to indicate that they have an asset management system and bridge inspection data in place.

We're working with the federal government, our partner in this program, to ensure a portion of the COMRIF funds is allocated to the development of asset management capabilities amongst municipalities. The auditor recommended that the ministry implement performance measures dealing with the condition of assets under management and the cost effectiveness with which resources have been employed to manage the province's highway system, and to report annually on those results.

I'm proud to say that we are improving our efforts in this regard. Certainly, performance measures have been used for many years in MTO. For example, for the pavement, bridge and maintenance offices, we have monitoring systems in place that report on data collected on an annual basis, including time to get to bare pavement after winter storms, and on pavement and bridge conditions.

The auditor recognized the current work being done on performance measures through the implementation of our asset management framework, which I mentioned earlier. This emphasizes appropriate management decision-making, and it will help us meet the auditor's recommendations. We have other measures under consideration in this framework, such as looking at how we value the assets and how we look at the remaining service life of our assets.

Also in response to the auditor's recommendation, we are currently working on developing a quarterly report to provide the status of activities that will affect our performance measures. In addition, we are developing training programs in the use of all asset management tools, including performance measures for all our staff.

A new integrated inventory monitoring system is also in development that will enable more current and automated comparative analysis and reporting. The ministry will also implement the auditor's comments on contract administrator documentation through annual updates to our inspection manuals, our contract officer manuals and the consultant performance appraisal system that we use to judge our consultants.

To conclude my remarks today, let me once again thank the Auditor General for his recommendations, and also the Chair for the opportunity to present to the standing committee on public accounts. Although we are proud of our performance and of our professional and dedicated staff, we recognize that there's always more that can be achieved. Our commitment is to continual improvement, and by continually examining and adopting the best and most cost-effective design, construction, maintenance and highway management practices, Ontario will continue to provide leadership in highway infrastructure management and deliver maximum value to Ontario taxpayers. Most importantly, we'll keep Ontario's roads the safest in North America, as is our hope.

Again, thank you for the opportunity to address the Auditor General's report. We'll be happy to take questions.

**The Chair:** OK. Do we have any questions? Julia.

0950

**Mrs. Julia Munro (York North):** Thank you very much for coming here this morning. I wanted to ask a question that relates to the first part of your presentation on the issue of the maintenance contracts. In the auditor's report, it details the manner in which the contract administrator is able to impose sanctions where required. I wanted to ask you a question with regard to that. Do they improve? Are these relatively oversight kinds of situations?

The reason I wanted to know was the issue, then, of not renewing a contract at some point because of the sanctions. What kind of experience have you had in that whole area of how well they respond to the sanction issue? Do you have to not renew contracts because of it? I wonder if you could give us a sense of that process and how effective it is.

**Mr. Rafi:** Sure. At a general level, anyhow—and I'll ask Carl to address some of the types of sanctions we apply—our contractors' performance has been, I think, examined by the auditor and found to be in high compliance with the standards that we set for them. We do believe that that is actually a function not just of LAC standards but of their adherence and of our experience over several years in that regard with them.

There is a demerit point system that we use for sanctions that allows us to increase the demerits, which has a financial penalty. We would obviously look at public safety as the ultimate concern that we would have. We're quite pleased to be able to say that we don't have examples of public safety being compromised, but, of course, depending on severe weather conditions or what have you, they may not meet the threshold standard each and every hour of their requirements.

To give you an indication of some of the specifics, perhaps I'll ask Carl to respond.

**Mr. Carl Hennum:** In the contracts, as the deputy explained, we have pre-set schedules for what happens if the contractor does not meet our requirements. These could be points that accumulate up to a certain level, or it could, in fact, be financial penalties. Yes, we have applied these on a regular basis. I'm happy to say that we are quite impressed with the performance of our contractors, quite frankly, but things do happen.

The penalties or the points are for a whole range of types of shortcomings that could be anything from not keeping proper records, for example, to not showing up on time for a snowstorm, or using the wrong material on the highway for anti-icing and de-icing purposes and so on. So we have applied these on a regular basis. The contractors take these things very carefully.

As you know, we have a competitive environment for awarding our contracts, and they operate on probably not a very generous margin, because there is keen competition out there. So penalties such as financial penalties are taken very seriously. In addition, of course, we have discussions with them about what they're going to do in order to prevent these things from occurring again. I can guarantee to you, they don't take these things lightly, and they have some very serious discussions with us as to the fairness and consistency in the way we apply these things. So far, we have not gotten to the stage where we have contemplated any break of any contracts or refusal to renew contracts.

**Mrs. Munro:** Given what you have said with regard to what I would agree with, that people would want to take those very seriously, my second question, then, has to do with the issue—and you have just alluded to this, but I'd like a further conversation about it—of the competition and the fact that this process does depend on a healthy, competitive environment. I wondered if you could comment for us on whether you see any challenges with retaining that healthy, competitive environment. Obviously, in this particular area, as is the case with many others, there are huge capital investments required for anyone to contemplate being part of the competitive

process. It would seem to me that you might have some parts of the province where this is a healthier environment than others. I just wondered if you could comment on this, because I do think it's a very, very important part of the province's ability to maintain the kind of standards that you're looking at.

**Mr. Rafi:** We have actually gone through another round of competitive tenders for areas that have come up for renewal throughout the province. Whether it's in less populated areas of the province or more densely populated highway networks within the province, we've been very pleased to see a healthy environment. We have seen the willingness of companies to come with their bids in the blind, sealed approach that we have, with numerous companies applying for each and every contract. There is competition. If a company didn't get the last one, they are sharpening their pencil, and that's creating a benefit to the taxpayer by lower bid prices for these jobs and these contracts, as well as investment in equipment. Some companies are, at the beginning of a contract, identifying that they're investing in brand new equipment that they will capitalize over the life of the contract. We have aided that—investment as well as competition—by having varying lengths of contracts so that they can bid on a five-year, seven-year or nine-year schedule and we can prepare prices across those schedules and take the best price for us. It allows them to decide how they want to capitalize certain assets, what the age of their equipment is and so on. So it's allowed us to maintain a healthy, competitive environment and not to have to make capital investment in equipment.

**Mrs. Munro:** To me, this would be the key factor in terms of being able to continue. There are those companies, then, that are still looking at being able to get in on the next round, so to speak, and it very much is dependent on that.

I hear the area of responsibility for a coordinator talked about, but would you also make some of the contracts different sizes in terms of being able to attract different competitors? Is that part of your planning process?

**Mr. Hennum:** In the first round of contracts we typically had what we call the clusters of the area maintenance contracts, which sort of let the contractors bid on one of them, two of them or all three of them. We would then compare the best combined price of all these and pick the ones that would give us the best return on our investment, so to speak. We have continued that in some cases as well in the second round.

I should also mention to you that we do have two types of contracts out there. One is what we call the area maintenance contract, where the contractor manages the process and does all the work, and we just do the quality assurance. The other type of contract is what we call the managed outsourcing contract, where we actually do the management but use contractors to do all the work. These contracts are smaller contracts on a functional basis. Typically it may be one contract for winter maintenance in an area, it may be one contract for pothole patching, it

may be one for other things like patching or short resurfacing contracts, that sort of thing.

In addition, I should say, with respect to your concern about the smaller groups, in the area of maintenance contracts the contractors typically have subcontractors, which then allows the industry in general to access our work out there.

But you're quite right; one of the most important pieces for the success of outsourcing is to maintain the competitive element, and I think we have been extremely successful in doing that. We keep a close eye on the tendering process and the award process to make sure we are proactive in that regard.

**1000**  
**The Chair:** The Provincial Auditor wanted to add a comment.

**Mr. Jim McCarter:** We did look at that. We were concerned, especially in the less populated areas, whether you had a situation where you only had maybe two bidders, and it's like, "Bob, you take this one; I'll take the next one." We actually found, Mrs. Munro, that they had at least three bidders for all the contracts. We were certainly satisfied that it was a good, competitive process.

**The Chair:** From the Liberal caucus, I have David Zimmer, Ms. Sandals and Mr. Lalonde, and now I have Bill as well.

**Mr. David Zimmer (Willowdale):** I gather that the past history of how the money gets passed out at the ministry is that it has essentially been by envelope funding, and this new asset management business framework is to enable you to work out some priorities rather than just your envelope funding. Is the asset management business framework going to prioritize within an envelope or is it a global prioritization?

**Mr. Rafi:** Given your juxtaposition, I would suggest that it's a global look at the province's assets, to manage them on multiple indices. It's really a business process whereby we are using everything from corridor plans in each region of the province's highway network, segment by segment, to have an assessment of the asset state and to then apply various business measures to determine what levels of rehabilitation you need to spend money on at what time. It gives us an overall picture of the asset at any point in time. Frankly, it has been deemed as the most sophisticated approach to valuing, addressing and maintaining what is a significant investment, and built-up investment over time, in the asset network. It isn't really looking at, "You get a certain amount for this region, this region and that region," as much as it's saying, "Where do we best apply funds to ensure preservation of the asset as well as expansion?" That is a balance that has to be struck and has to be struck most effectively.

**Mr. Zimmer:** But to date it has essentially been envelope funding, so are there two processes to prioritize within the envelope and is there another process to move money from one envelope to another? Thirdly, if the decision is to move money on a priority basis from one envelope to another, how quickly are you able to do that?

**Mr. Hennum:** Essentially the asset management process we're putting in place is a planning process, a management process, a decision process, and it will provide us with better information as input to the budgeting process, which in turn creates the envelopes you're talking about. The envelopes basically will allow the government to track the various types of investments they make. The process we're putting in place is to enhance the advice that we can give with respect to where to make the best possible investments. The funding, hopefully, will be influenced by that and created on the basis of where the best strategies lie in order to maintain a certain piece of highway or the overall network itself.

**Mr. Zimmer:** Is it safe to say, then, that in fact we're moving away from envelope financing?

**Mr. Hennum:** I don't know if it's really important whether they give us funding in certain envelopes as long as they have the right information from us to create those envelopes in the first place. That information will look at all the possible strategies for maintaining a piece of highway, whether it's expansion for certain reasons, rehabilitation or preservation types of projects, to maintain the highways while we're waiting for the level of deterioration required for full rehabilitation.

**Mr. Rafi:** If I might just try to expand on that, to try to address your question, on the matter of envelope funding, I don't think I'd characterize our funding in that way actually. What I would suggest is that we have our annual capital budgeting cycle with multi-year planning, so that it isn't a matter of saying that you have X hundred million dollars for rehabilitation, and you figure out how you spend it that way. It's far more detailed than that.

What we're providing on an annual basis to the capital plan, and then to cabinet for its approval, is a detailed assessment by highway corridor as to what is relevant for expansion and why, because of the economic aspects of these corridors; what is necessary for rehabilitation and maintenance and why. That's where the manager framework comes into play, because we can quite deliberately and in a detailed manner identify that a dollar spent today is saving X amount of dollars over the long term if we rehab now versus waiting. So if you want to call that an envelope-based approach, I would say that the size of the envelope, if you will, varies year over year, because they're looking at it on a multi-year planning basis with annual budgeting approval.

**Mr. Zimmer:** I guess my concern is—my experience has been that once money gets put into an envelope, it's hard to get it out. It tends to stay there. And there's a built-in incentive to use up the money in the envelope. My question is, on the new asset management business framework, how quickly are you able to move money from one envelope to another envelope in keeping with the overall asset management priority?

**Mr. Rafi:** I would say that it's as immediate as necessary. It's the most transparent method of managing critical assets that one could have, because we have to be able to account for why we're spending that money. It isn't a matter of a gross amount, as I mentioned earlier:

"Let's hurry up and burn that capital, because we're coming to the end of the fiscal year." That happens to apply for a few reasons, not the least of which is that we're talking about highway capital expenditures, which are not quick expenditures. A commitment today will have a multi-year impact, because it will start with planning, design, construction, and then rehabilitation and maintenance.

It's unlike operating funds, where the ability to move money from within and to address priorities is there, but since we have a multi-year planning approach with individual life-cycle costing for individual segments, I think it's not only transparent but it allows the government to decide where it wants to put its emphasis. It also allows us to make the case properly and as significant to engineering standards as possible, to say, "This should be rehabilitated, this should be and so on."

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**Mr. Zimmer:** My last question: How is that actually done, if you find yourself in conflict with an envelope manager who has a compelling argument to use the funding in the envelope and you find that compelling argument is in conflict with the bigger asset management argument? What's the process for sorting out that debate or resolving that conflict?

**Mr. Rafi:** The debate doesn't exist if you can't prove the need for the funding, and the need for the funding starts fundamentally from an asset valuation, an asset assessment base. Secondly, we are constantly balancing the request for expenditure between expansion and rehabilitation/maintenance. Obviously, given the fact that Canada is a strong trading nation and given the fact that the US is our border partner, the highways become key economic corridors. While we undertake expansion in certain areas—for example, Windsor—we are also undertaking rehabilitation at the same time in some of those areas. Those prioritizations are balances and trade-offs that are made by the priorities that are set both economically and by the application of this asset management framework, which allows us to make critical choices that in the past were made based on, I would say, engineering expertise. Now it's raised to the next level of expertise, business acumen, as well as need from an engineering point of view.

**Mr. Zimmer:** Who's the actual body or person or committee that resolves that conflict? There's an envelope, overall asset management conflict. Does the deputy do that?

**Mr. Rafi:** No. Our plans are prepared, submitted to the minister for review, as you would likely know, and then we work with public infrastructure renewal, which manages the government's capital expenditures across its entire enterprise. Those decisions are then assessed based on other priorities in other sectors and taken to cabinet for approval, and then we're given our allocations, just as we are with operating expenditures, through our annual results-based planning.

**The Chair:** We had approximately 10 minutes from Mrs. Munro and about 10 minutes from David Zimmer,

so I'm going to give Mr. Prue 10 or so minutes to lead off and then we'll go back through the rotation.

**Mr. Michael Prue (Beaches–East York):** I don't know that I need the whole 10 minutes. I'm most interested in the whole controversy around salt. Since you have in the past two years done all of these wonderful things that I'm reading about here, how much has tonnage gone down in Ontario? What's the actual reduction in salt, or has there been any?

**Mr. Hennum:** As you know, the amount of salt that we put down is highly dependent on what kind of winters we have. So you will not be able to find one trend; it depends on the severity of the winter, the frequency of snowfalls, temperature fluctuations. Typically we'd use more salt if it hovers around the zero mark, because you get freezing and thawing, for example. It's a matter of the type of winters that we have; it's variable. It's difficult to compare from year to year, although we are at the moment developing what we call a winter severity index, together with other provinces in Canada and with the United States, and we're trying to come up with the possibility of making those comparisons that you are referring to there.

**Mr. Rafi:** In addition, we are trying to establish a goal of perhaps as high as a 20% reduction in overall salt usage. As Carl has indicated, there is huge variability in that. But ultimately, with some of the technology that we've put in place, the GPS and mobile AVL technology that I referred to in my remarks, we have a more accurate indication of both the spread of salt and also various techniques that we've applied, like pre-wetting of salt to ensure that it stays where it's applied. So if I could say so in this manner, it isn't just about how much, but about spread rates, amount of spread, its application and where it stays, so that environmental degradation is minimized as well.

**Mr. Prue:** I'm from Toronto. I try to get out of Toronto in the wintertime because the snow here is all black. It's not very nice. I've noticed in the city that they tend to do less plowing and more salting. Are we doing that in Ontario? Some of the side streets don't get plowed any more since amalgamation; they get salted and salted again and salted again. I would have to think that the amount of salt being used in the city of Toronto is up hugely and the amount of plowing is down equally. Is that a phenomenon that is happening elsewhere around Ontario roads?

**Mr. Hennum:** We use both plowing and salting, and sanding, for that matter. It just depends, of course, on the amount of snowfall and the temperatures as well. Salt can only be used down to a certain temperature and after that it's not effective, so we would use sand in those situations. We do use snowplowing as one of our major activities. In fact, most of our equipment now is combination units, with both a plow and a salt spreader on the trucks themselves. We are not proceeding with what's sometimes referred to as the salt option, as you know, which is just trying to melt the snow in place.

**Mr. Prue:** All right. So this is happening more so in the city of Toronto than in Ontario itself, this whole use of salt as opposed to plowing?

**Mr. Hennum:** I can't speak for the city of Toronto. We don't monitor their processes.

**Mr. Prue:** Since you've started trying to use less salt, what has been the impact particularly on the bridges and the roads? Obviously, if you use less salt, there will be less rotting out of the infrastructure under the bridges. Again, using Toronto examples—I'm sorry; I'm just a boy from Toronto—the Gardiner Expressway had to be pulled down because it got too expensive. The salt completely destroyed that highway. Have we noticed any improvements on our bridges in Ontario if and when the salt has been reduced, which I'm not sure it has, from your answer?

**Mr. Hennum:** I think there are improvements on our bridges, but I don't think the main reason is the amount of salt we use. We have different standards for designing bridges these days than we had some 30 or 40 years ago.

**Mr. Prue:** But half the bridges in Ontario are still 30 or 40 years old. I drive over them too. They're no different.

**Mr. Hennum:** That's right, but we're talking about reductions. There's still going to be salt on the bridges and if they reach, for example, the reinforcing steel on the bridge, they're still going to start corrosion. So what we do instead is try to prevent that. For example, in areas on the structure that can be exposed to salt, we are using stainless steel in some cases, or we use coated rebars in some other areas. We also use a thicker cover of concrete over the rebars to prevent salt from seeping into the actual metal itself. We use different bridge deck sealing, and so, on to prevent that sort of thing.

In the deterioration of the structure, it's not so much the amount of salt as the fact that salt reaches these critical things like reinforcing steel. We have to design them in such a way that we prevent this from happening.

**Mr. Prue:** I think that's close enough to 10 minutes. Thank you very much.

**Mrs. Liz Sandals (Guelph-Wellington):** Just to a note to Mr. Prue, that I can tell him that Guelph is less slushy than Toronto. I can actually tell you where the maintenance contracts change driving along the 401, because I can see the change in practice, which probably means I spend too much time driving up and down the 401.

I'd actually like to ask a couple of questions. One is about the internal audit that was done by MTO. Congratulations to the ministry for doing this, and obviously sufficiently thoroughly that the auditor has just included your internal work in his report. But on page 353 it references the issue of the quality of work by design consultants. This is a particularly hot issue in Guelph, because we did have the instance of Hanlon Highway 6 north, an interchange being built, where I take it, due to design flaws, construction actually had to stop. It had to be redesigned. Some of it had to be rebuilt. It was quite a fiasco. I'm wondering if you could tell me something

about how that particular incident was addressed, if that's appropriate, and then more generally, how do you monitor to avoid that sort of fiasco in the future?

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**Mr. Rafi:** The specific incident that I believe you're referring to, if I understand it correctly, is one of the rare circumstances where we've had to take legal remedies with the design consultant because we discovered that there was an error in the design. That is a rare circumstance.

We've also, since our internal audit service, looked at the quality of work by design consultants. We've put in a few improvements to our current processes. I'd like to reference three of them.

One is implementing an engineering project management system, which will ensure that these designers have a sufficient amount of time for their projects. On occasion, that can be an issue.

Secondly, we're looking at improving our estimating tools, and we've added a refresher course and training module, up to two days, on estimating for staff. We've sponsored approximately 15 courses in this area of cost estimating.

The third area is to implement a system to track various change orders, because of course if there are change orders, they're likely associated with the initial design, and to determine how we can reduce change orders, which then has an impact on ensuring higher-quality design, which goes back to the first couple of changes we've made as well.

In the main, I think the work that the design consultants do is of a high calibre and is probably the more complex end of the business because one can't look at every foot of the proposed road network that they're designing. They have to take certain segments and sections and then extrapolate in that regard.

We're trying to take initial cost estimates, and before we put out the contract, we're trying to have final estimates so that we can keep change orders and overall prices of construction within finer gradations of 5%, perhaps 10%.

I think those measures will continue to see improvements, and we'll continue to try to improve the quality of our design as well, to speak to the specific issue you identified.

Maybe you'd like to add something.

**Mr. Hennum:** I just want to add that we do have a system now where all the consultants have to be pre-qualified in their specific disciplines and they can only bid on our consulting work if they have that pre-qualification. So they have to submit their qualification for scrutiny by a team of our staff, who are also experts in their area.

We also have instituted a performance evaluation system. When we do evaluate the submission from the consultants, we take three things into account: first of all, the quality of the submission itself; their performance in the past, so they can't just come and promise us good work—they have to actually have demonstrated this; and

of course the cost of the submission itself. So we put about 50% weight in that evaluation process on past performance.

**Mrs. Sandals:** Would you be able to create a feedback loop in that performance evaluation where, if they've done work for you previously, you would be able to look at the number of change orders, the accuracy of the cost estimates, so you can feed that back into a future contract?

**Mr. Hennum:** That's correct. I want to mention that the Consulting Engineers of Ontario, which is sort of the body that encompasses these people, also recognizes that there is room for improvements. I have a commitment from them that they're going to work closely with us to put additional quality control processes in place. Perhaps they will also introduce things like peer reviews of the designs and so on so we can minimize such unfortunate things as happened on the Hanlon Expressway.

**Mrs. Sandals:** Thank you. I am pleased with that reassurance, that you've addressed that, because there were certainly some problems with that.

The other question I've got has to do with this issue of routine maintenance and monitoring of contracts or setting the level of contracts for the level of maintenance. This really goes back to my days of being president of the Ontario Public School Boards' Association and a situation I'm aware of in northeastern Ontario a few years back, where they had a record number of snow days; that is, days when they had to cancel the school buses. I accept that the weather is variable. It wasn't that there was an ongoing blizzard or ice storm; it was just simply related to the fact that it had snowed overnight and that the plows hadn't been sent out early enough to clear the roads and, because nobody had cleared the roads, they had to cancel school buses and therefore they had to cancel school.

I'm honestly not sure whether that was a situation of the contract standard being set too low or whether it was a situation of the standard not being met. But where you have a situation like that, where the level of performance, for whatever reason, obviously isn't getting the road cleared on time, what do you do about that?

**Mr. Hennum:** We have performance standards in our maintenance contracts, both in the area of maintenance contracts and in the managed outsourcing contracts, which generally stipulate that the contractor has to be ready to get out of the yard, fully loaded with salt and with a plow in place, about 30 minutes after he gets the call to go out. Of course, the trick is therefore to call him out at the right time. In the area maintenance contracts, that's done by the contractor, and our monitors are watching what's going on to make sure they perform to standard. In our own areas, we are the people who call the contractors out.

What we have done in order to operate more timely—the deputy minister referred to our advanced road weather information system, which will give us pre-warning of precipitation as well as icing on the roads and so on, so we can forecast the conditions and we can be

more prepared to go out on time. This is one of the things that technology is helping us do in a more timely fashion.

**Mrs. Sandals:** So you've been able to improve, not just in the GTA but all over the province, the reaction—in my lay terminology—to sending the plow out when it starts to snow, as opposed to what was obviously happening in this case, which was, five hours after it stopped, we'll think about plowing.

**Mr. Hennum:** Yes.

**Mrs. Sandals:** You've been able to put in a more timely response.

**Mr. Rafi:** That's absolutely the case, as Carl has outlined. In addition, just to give you an indication of a specific performance measure, as a standard of bare pavement achieved after winter storms that is applied to our contractors, in 2003-04 the bare pavement performance results were 96%. So 96% of the time they achieved or exceeded their requirements for bare pavement after winter storms. We set our standard requirements at 90%, so we're pleased that they were surpassed yet again. There have been some fairly severe weather conditions. We've tracked this data going back from 1998 and I think in each and every year we've exceeded the 90% standard year over year. That tells us, as part of an earlier question as well, that our contractors take their requirements quite seriously.

**The Chair:** Mr. Lalonde?

**Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell):** May I pass it on to Mr. Mauro, because he has to leave?

**The Chair:** Sure.

**Mr. Lalonde:** I'll come back, though. I want to make sure that I get my question too.

**The Chair:** We're going to go to the other parties after Mr. Mauro.

**Mr. Bill Mauro (Thunder Bay-Atikokan):** I have a few questions but I just want to follow up on what Mrs. Sandals asked. You said that you have a 94% success rate or compliance rate of having bare pavement after snowfalls, but you didn't say how long after or, if you did, I missed it. Anybody can get it plowed after the snowfall, but if it's a week later, it's not doing us a lot of good, is it?

**Mr. Hennum:** That's correct. We classify the highways in terms of where they are and what traffic volumes there are on them. For example, we have standards for exactly what you're talking about, for what we call class 1 highways, where if traffic is greater than 10,000 vehicles per day, the bare pavement standard is eight hours after the storm.

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**Mr. Mauro:** What about when it's less than 10,000 vehicles?

**Mr. Hennum:** If you're in northern Ontario, on the Trans-Canada, for example, that's a class 2 highway, which is between 1,500 and 10,000 vehicles per day, and the standard is 16 hours after the snowstorm is complete.

**Mr. Mauro:** And you can justify that just because of lower traffic volume? If this is a safety issue, how do you

apply a rule like volume of traffic to a Trans-Canada Highway, which is the only link, the only method—no other options exist for people to utilize to go east-west in this country, and because it's a lower traffic volume, you apply a different standard to it. How do we justify a decision like that?

**Mr. Hennum:** In fact, we also have the numbers on what we actually achieve out there. On the class 2 highways which I just referred to, the actual average time to regain bare pavement is four hours, vis-à-vis the standards. So we are overachieving in this case. This is for the very reason that you're talking about. We are aware that the sooner we get the pavements bare, the safer the highway is. But we have to set priorities, because we can't cover the whole network instantly at the same time. So you will find in your area that one part of the highway will have a very short period, and then it takes time to drive to the other end of the network.

**Mr. Mauro:** With respect, though, in terms of setting priorities, each section of your highway system has contractors and/or publicly employed staff attached to it. That section is their priority, because that's their responsibility contractually. So there's no reason to suggest that that's an excuse for there to be a different standard in terms of the amount of hours that exist before it has to be bare pavement, right? That's their priority. That's their job.

Anyway, I don't want to beat that one up. I have a few other questions.

What criteria do you use to make your decisions around capital allocations for new construction?

**Mr. Rafi:** As we mentioned, we have in development—and hopefully we'll execute the entire asset management business framework, which is our business process where we'll look at the current asset valuation and the state of each segment. We're in the process of doing segment-by-segment assessments across each and every—

**Mr. Mauro:** I'm sorry. I didn't mean rehabbing or reconstructing existing infrastructure, I meant any increases to the capacity of the system—so new build.

**Mr. Rafi:** New build is, as I mentioned earlier, on our expansion priorities. We're looking at highway traffic in terms of volumes. We're looking at key economic corridors and access points to border entry areas. Those are all examined across the network to determine where best to apply expansion monies and where best to prioritize that in the context of how that will have the most economic benefit, the congestion relief benefit, in terms of access during critical periods in key areas of the province.

**Mr. Mauro:** The volumes and economic benefit are linked. So would it be fair to assume that the capital expansion projects are going to exist where the growth in the province exists?

**Mr. Rafi:** I would say that's certainly an important factor, but not only the factor.

**Mr. Mauro:** Beyond programs like SHIP and COMRIF, are there any long-standing perpetual agree-

ments with the feds around the maintenance or capital expansion works for the portion of the Trans-Canada highway that exists in Ontario?

**Mr. Rafi:** Yes, there are two other important partnerships we have. One is the border infrastructure fund, which is about expansion in critical areas as they come to key junctures in the border. Windsor is an excellent example of that, where we have, actually, as far back as Tilbury, going southwest toward Windsor—to expand the network there. The second one is the Canada strategic infrastructure fund, where we're looking at, again, strategic locations to apply for provincial projects for inspection.

**Mr. Mauro:** But the Trans-Canada Highway, is that completely within the purview of the province to maintain and expand and take care of, beyond the specific programs that come up once in a while?

**Mr. Rafi:** It is; however, Transport Canada has had a national highway system program in place for many years. So each province identifies its key corridors. In Ontario, it's beyond just the Trans-Canada; we look at other corridors as well, and they determine based on kilometre ranges as to what type of funding they provide to each province. I guess constitutionally, if that's part of your question, that responsibility rests with the province, but certainly there is an obligation, we feel, that the federal government has to assist Ontario in that regard.

**Mr. Mauro:** So historically there is no long-standing obligation on their part for the Trans-Canada Highway.

**Mr. Rafi:** Historically they have contributed to the building and development.

**Mr. Mauro:** Understood, but it's basically we joining with them on program and cost-sharing. Is that the case in other provinces? It's my understanding—and I'm looking for some clarification—that other provinces have different arrangements with the federal government when it comes to the Trans-Canada Highway, within different provincial boundaries. Would you know the answer to that?

**Mr. Hennum:** There are variations in federal investment in highway networks across Canada. You're quite correct.

**Mr. Mauro:** I don't mean investment in terms of programs that are developed. I mean investment in terms of historical agreements that exist between provinces and the federal government for the maintenance of the Trans-Canada Highway. Would you know?

**Mr. Rafi:** Maintenance? No, I don't believe that's the case. On expansion, we watch that pretty closely to ensure that Ontario gets what it should have in terms of the network.

**Mr. Mauro:** In the notes that we received there is some information here about the increase in costs associated with maintenance and capital works over the last number of years—six years, eight years, whatever the scope was; I forget. I was unclear when I read it as to what the link is for the increase in the costs. Are you drawing a conclusion and suggesting that the costs have increased when it comes to highway maintenance

because there has been privatization? Is it because there have been worse winters in the last six years or because we've done more work? What's the suggested reason for the increase in costs associated with the highway system?

**Mr. Rafi:** There are several changes that have taken place. For example, we have added approximately 11 different requirements for our contractors to provide. In this current round of contractor outsourcing in our RFP processes, we have seen a reduction in our costs but added these 11 elements, not the least of which is the need to apply West Nile virus to still water/stagnant water areas throughout our network, which is a huge concern for us—enhanced emergency response methods.

In addition to that, the highway network has increased in terms of lane kilometres. There has been expansion, there have been additional lanes, so there are additional costs associated with that. But we have actually received the benefit of that through our competitive tendering process. In addition to that, we have forgone capital expenditures that we would have undertaken—approximately \$7 million per year in equipment—because those costs are being passed along.

**Mr. Mauro:** So you would suggest it's cheaper now to provide the same level of care than it was prior to privatization. Is that what you're saying?

**Mr. Rafi:** Yes, and this is, I think, a controversial issue. It was discussed and debated in 1999 with Mr. McCarter's predecessor. Our view is, we are getting more value for the money we spend now than we did in previous years. If one just applied CPI inflation from 1999 forward, year over year, to 2003-04, you'd have to add \$23 million alone just for keeping pace with inflation on that. So we feel we've done very well.

**Mr. Mauro:** My last comment is that others have spoken about quantifying and checking up on the people who are responsible for doing the work, the management within MTO. I can tell you from personal experience that, as Ms. Sandals said earlier, when you're travelling sections of northern highway, you can tell where one contractor stops and another one begins. The distinction between the quality of the work is that stark and it's extremely dangerous for a lot of folks. I'm hopeful that what's been raised in this audit is going to be acted on by your ministry and there are going to be products and mechanisms in place to address contractors who are not doing the work that they're supposed to do.

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**The Chair:** I wanted to ask a couple of supplementary questions with regard to what Mr. Mauro brought up, and that is, the federal contribution toward our new highway system and that kind of thing.

I wonder, Deputy, if you would provide the committee with figures on their contribution toward our new capital construction over the past 10, maybe even 20, years with regard to our highway system.

I'd also like it if you could provide the committee with the percentage share that Ontario is getting from the Canada-provincial construction—I forget the name. I understand it's about 25%, whereas we have about 38%

of the population. Again, we're not getting our fair share. I said that when I was transportation minister and I continue to support the present government's position in getting a fair share of programs as we go forward. I think you left the impression that we were getting our fair share under that agreement and that there weren't other programs in other provinces.

When we were in Fredericton this summer, I met in New Brunswick by happenstance with some Ontario contractors who were bidding on four-laning the Trans-Canada Highway from Edmundston down to Fredericton. I'm aware that there were great gobs of federal money going into that four-laning project, both past and into the future.

I think it's important that we keep our eyes on that. When I was the minister, the federal government gave \$6 million out of \$1 billion of construction to the province of Ontario, whereas they were pouring huge amounts of money into other provinces across this country. For us to call the Trans-Canada Highway the Trans-Canada Highway when the province of Ontario is spending all the money on it, I just don't think is fair. I think the people out there have the idea that the federal government is coming to the table with regard to building the Trans-Canada Highway. They have in the long-term past, but they sure weren't doing anything when we four-laned the 417 from Ottawa out to Arnprior, for instance, which was a significant project. Carl, I don't know the total number on that, but it was well over \$100 million. They may have come to the table very late, in the last phases of it, but for that kind of a project, for instance, not only are they not giving money for the north, they're not giving money anywhere on the Trans-Canada Highway.

It's important for us to keep these numbers out there so that people understand that we aren't getting our fair share, not only with regard to other programs, but also in terms of construction.

**Mrs. Sandals:** Norm, may I bail in?

Having been on the same trip to Fredericton, I concur with Norm totally. When you're flying into the airport, you seem to follow along the same path as the Trans-Canada. I actually noted that that highway is four-laned through the middle of nowhere, and it would be interesting to know how this got paid for. I suspect you're right, that the federal government four-laned it through a vast expanse of bush. So I concur with your observations totally.

**The Chair:** I think it's really important in this debate that we are now having in Canada and in Ontario that we've got to demand of the federal government that they step up to the table.

**Mr. Rafi:** If you'll allow us, we will get that information after today. We don't have the federal contributions over the last 20 years here, and the percentage share for Ontario for the various programs, not just the Canada strategic infrastructure but the border infrastructure, the strategic highway infrastructure.

But I would like to be clear on the record that if I did say that, then I misspoke myself. I didn't mean to suggest

that Ontario feels—or I feel, for that matter—that we have received the adequate amount of funding that we should get based on highway kilometres, based on percentage use, based on economic activity. By no stretch is that the case, in my opinion and, I dare say, in my colleagues' across all sectors that Ontario interacts with the federal government.

My reference to the federal government's role in maintenance, I believe it was—it is my understanding that they do not provide any maintenance activity in any region of the country. As far as the New Brunswick example goes, it's a lovely highway for a very concentrated number of individuals to travel, and I would only echo and agree with, I think, probably all members that Ontario could do a lot better from the federal government in that regard. So I just want to be certain that my comments were reflected appropriately, that I didn't misspeak myself.

**The Chair:** I think the area where confusion may have arisen was when Mr. Mauro was asking you about the Trans-Canada Highway. They have contributed in the past to the Trans-Canada, but it's a distant past.

**Mr. Rafi:** Oh, yes, original build.

**The Chair:** In terms of the total costs associated with it, it's becoming a smaller and smaller percentage as we go forward in the history, as we improve the Trans-Canada Highway in different sections. They're not contributing, or weren't contributing, to the four-laning of Highway 69 up to Sudbury. I think they may have kicked in more recently on that one. In my view, you can't present these figures and say they're giving \$50 million when we're talking billions of dollars. It's a very, very small percentage of the total.

**Mr. Rafi:** I think we have a strong reputation in Ottawa for our concerns in that regard.

**Mrs. Munro:** I wanted to ask a couple of questions, and you may appreciate my interest in asking.

With regard to the issue of gross vehicle weight of trucks, in the auditor's report he refers to the fact that it is estimated that there is, he suggests, \$300 million of avoidable damage. Obviously, I know about the phasing in of the vehicle weight and dimension project, but I wondered if at this point you are able to give us a sense of the effectiveness of those initial phases 1 and 2 in terms of being able to suggest that it is having a beneficial impact on those kinds of costs.

**Mr. Rafi:** The ability to ultimately declare victory on the \$300 million will really be a function of the industry's migration to new equipment and what we're calling the safe, productive and infrastructure-friendly equipment that they will be obliged to have on Ontario roads. In some cases, that may take 10 to 15 years as they phase out and grandfather existing production and equipment and as they build new equipment or equip their trucks with active axles, as opposed to fixed or liftable axles. From your experience, you know probably more about that than I do. So, to be perfectly up front about it, it won't be until the end of the fourth phase of our

vehicle weights and dimensions project. We are executing the third phase this year.

To give you an example, the number of lift-axle-equipped vehicles in each project phase—in the third phase it will be about 19,500 trailers. This is the most heavily populated stage, if I can call it that, and then that drops to 10,000 trucks in phase 4. We're very confident that by the end of phase 4, we will have achieved a significant reduction in degradation and impact on the infrastructure, not just provincially but municipally as well, because the radius turns in municipal streets and arterial roads really take the lion's share of that damage.

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**Mrs. Munro:** My second question has to do with a related topic, in that there are some issues raised around the bridges in the province. I wondered if you could tell us, what is the lifespan of a bridge?

**Mr. Rafi:** I'll let the most experienced transportation engineer in Ontario address that.

**Mr. Hennum:** The—

**The Chair:** Could I just interrupt here? Mr. Hennum, since I left the ministry, have you now become the chief engineer?

**Mr. Hennum:** I never made that claim, at least not when you were there.

Probably about 60 to 70 years is the average lifespan, but that means you have to look after it in the meantime, of course. There is constant rehabilitation and maintenance that is required to achieve that kind of lifespan, but that's in general. I have to preface that; it depends on the type of bridge, because we are using all kinds of bridge material these days. We have just received awards actually for using timber structures in northern Ontario in quite innovative ways, which both reduces costs and fits well into the environment in which they are built.

**Mrs. Munro:** That was really why I wanted to ask the question, simply because of the complexity. Obviously there's going to be a huge variation in terms of what is an average bridge lifespan. The challenge of rehabilitation is one the auditor identified. I think we have numbers here that refer to the number of bridges that are provincial bridges and the number that are municipal bridges. I wondered if you could just comment briefly on the possible role of the ministry in terms of the oversight of this rehabilitation process.

**Mr. Rafi:** In terms of bridge management and any necessary maintenance or rehabilitation, as I think the auditor pointed out, as you suggest—I guess our bridge management system contains a high degree of complete and accurate information, but he has made some suggestions about notification flags in terms of inspection cycles. We're certainly going to execute that.

As referenced in my remarks, the bridge management system we have in place is actually a fairly sophisticated and effective model that's being deployed and used by other jurisdictions in the country. As well, we have undertaken some changes to make sure we do have more complete and accurate bridge condition information in place, and that is the requirement to inspect every two

years. The data is then loaded on an annual basis into the system so it can be effectively used. Obviously, experienced professional engineers are doing the inspections.

We have updated our inspection manual and the structural manual and we've added training and refresher courses for staff. But we've also applied the bridge management system and given it to the Ontario Good Roads Association so they can educate municipalities and use this bridge management system for their own maintenance inspection requirements, both legislatively and in a responsible manner, for all bridges and roads that they have control over as well.

**The Chair:** Mr. Prue, do you have some questions?

**Mr. Prue:** Yes, I have two separate questions. The first one relates to new construction maintenance, new construction materials. I was heartened over the last number of years to see that, instead of using aggregates, digging up more hills and vales in Ontario and putting more stuff in the dumps, you're starting to use old tires, glass, old concrete in the roads. How much of that is being used, or how much are you relying on the old materials?

**Mr. Hennum:** I do not have the actual quantities available for you—I can provide you with that if you're interested—but it's a fairly moderate amount at this stage of the game. We use it basically in side-slope fills and that sort of thing. I will be able to provide you the quantities, if you wish.

**Mr. Prue:** Is it environmentally possible that instead of putting glass in landfills it could all be used on road construction?

**Mr. Hennum:** It has the potential for it, yes.

**Mr. Prue:** Is it possible that, instead of having huge tire dumps like the one that was on fire for years in Hamilton, the tires could be ground up and used in road construction? And, if all that's possible, why aren't we doing it?

**Mr. Hennum:** I think the jury is still out on whether that is a good idea or not. It depends, again, on the quantities, of course. For example, what do you do when you rehabilitate, have to reconstruct or you have a whole bunch of rubber that you have to dispose of in some way? It depends on the types of roads as well, of course. Some municipalities have used it quite a bit on lower-volume roads. We have not used rubber in the pavements to any great extent, but we have used it in the fills outside the pavement platform.

**Mr. Prue:** I noticed, and I thought it was really amazing, that when they tore down old Terminal 1 at Toronto airport they used all of the old concrete. They never took any of it away. They used it in the construction of the new building. Can we do the same kind of thing with our old concrete in our roads or our bridges or anything else?

**Mr. Hennum:** We do crush it and use it for certain purposes. We don't have, quite frankly, that many concrete roads. We haven't built concrete roads for quite some time. It's just starting to be incorporated into our tenders right now. There aren't the huge quantities, and

we do try to use it wherever we can. Certainly, our objective is to recycle as much as possible what we have in the right-of-way. That's an objective, and a very commendable objective as well, I think.

**Mr. Prue:** My second related question: There is an enforcement program—congratulations on that—for going after trucks and trailers that are overloaded, because we know that that causes tremendous damage to the roads in Ontario. They overload them; it causes stress on the roads; they break down faster. So we go out and enforce that. But the auditor has noted that you do not collect or analyze any of the data on how many convictions are made. Why don't you do that—how much money, why the convictions are made? Why don't you do that?

**Mr. Rafi:** Actually, I wouldn't say we don't analyze the data; in fact, we have a commercial vehicle operator record that is for carriers—in other words, the companies themselves—and for drivers. There is a system of points applied. All charges are instituted on that system. Then, when you hit a certain threshold, through a stepped escalation process ultimately you can be taken out of business for too many collisions or weight violations, either moving or non-moving. We also have the most stringent requirements, certainly in Canada, and one of the more stringent requirements in North America, for both weight and moving violations on our carriers.

To your specific question, we have recently instituted what we call roadside data capture, an electronic system we'll be implementing this summer that will give a better monitoring and removal of high-risk offenders, by knowing that if you're overloaded in Cornwall and one of our enforcement officers stops you, that's real-time information to the officer in London as you come through that area as well. So we can flag individual vehicles to make sure that we're doing it in a more effective manner than hoping that we get them into the scale at the right time when they are overloaded. That's one area.

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The second area is that we're working with the actual shippers and the aggregate companies that actually load these trucks. It's always a challenge for the driver, because the impact on the driver is that they'll get somebody else to haul the goods. We're trying to work with that industry by doing spot audits and ensuring that when they're loading vehicles and they're giving them the load tickets, those vehicles are leaving their areas properly loaded so they're not damaging the infrastructure. So I think we're undertaking a few tools that are available to us and using the court system, which we can't control, in the best manner possible.

**Mr. Prue:** We need higher fines.

**Mr. Rafi:** I'm not sure that just increasing the fines is the best deterrent, in my experience. I think that the appropriate use of fines and education will be there. Courts sometimes are reluctant to apply certain liability charges unless and until there is strict proof. So absolute versus strict liability offences, meaning that if something happens you're simply convicted and you pay a fine or worse, are very difficult for courts to accept. We've had

some success, and I dare say the only jurisdiction in Canada that has had success with absolute liability is Ontario. So it's not just one instrument; it's a series of things that we've applied.

**Mr. Prue:** Ontario is now a North American leader in car production. It seems to be that the cars keep getting bigger and bigger. I see these Escalades and other huge, huge tanks on the road, like Hummers. Should Ontario be doing something about reducing the weight and size of the cars in order to assist our road maintenance? They have to be more harmful to the roads than small vehicles; they have to be.

**Mr. Rafi:** I don't have the technical specifications on that. It may sound like I'm passing this off to the federal government, but it is in their purview to determine the various dimensions, sizes and safety aspects of vehicles in Canada.

**Mr. Prue:** What effect are studded tires going to have on northern Ontario? That has been discussed in the Legislature this last couple of weeks. What effect is allowing studded tires in northern Ontario going to have on road maintenance across half of Ontario?

**Mr. Rafi:** I think it's far too early to be able to comment on that. We've just allowed for the institution of studded tires and a certain type of stud in specific locations in the north, as you identify. We've looked at this from a road safety point of view as well. Our hope is that it will bring additional safety, especially in wet ice conditions, which are certainly more prevalent in the north than they are in the southern parts of Ontario.

**Mr. Prue:** It's going to help in terms of safety, and no one will deny that. But in terms of maintenance, if it starts tearing up the roads and costing tens of millions of dollars in resurfacing—are you going to be monitoring this?

**Mr. Rafi:** Absolutely, yes, we're going to be monitoring. But it's purely speculative to put a figure on that or to even assume that it will have a deleterious impact on maintenance. It's too early for us to be able to say that. But we will be monitoring it.

**Mr. Lalonde:** Just to carry on with the question that was brought forward by Mr. Mauro, in the auditor's report on page 335, we have a table, "Highway Maintenance Expenditures." We know that we have privatized a lot of those maintenance contracts. What is the percentage of the maintenance contracts that have been privatized? Do we have the percentage?

**Mr. Hennum:** We're 100% outsourced in maintenance. All the work is done by contractors, for all intents and purposes.

**Mr. Lalonde:** That resulted in how much staff reduction? Approximately how many fewer staff do we have?

**Mr. Hennum:** We currently have about 800 maintenance staff, compared with about 2,400 before, so it's down to about a third.

**Mr. Lalonde:** About 1,200 less? When I'm looking at this, way back in 1996-97, we had 56,000 lane kilometres and now we're down to 46,000. The cost per kilometre for maintenance was \$3,900 and now it's up to \$5,300.

Why is there a higher cost per kilometre at the present time?

**Mr. Hennum:** A couple of things contribute to that. First of all, we had a bigger network before, as you pointed out, but we have retained all the high-cost highways, so the average cost per kilometre will go up. But the main reason is reflected in the total highway cost numbers, higher up in your table there, which the deputy minister addressed a little earlier, indicating that there is inflation in those figures. They also reflect a number of additions that we have made to how we do maintenance, such as technology in a number of areas and incorporating new regulations for traffic control when they do work on the highways, for example. If you add all those additions up, you will probably reach around \$20 million on an annual basis for all costs for operating and maintaining these new methods. Overall, you have inflation and you have enhancements to the way we are doing our business.

**Mr. Lalonde:** In other words, it has been a cost saving to the taxpayers, having awarded the maintenance contract to the private sector. It is a cost saving. Thank you. That answers the question.

**The Chair:** For Hansard's sake, you said yes.

**Mr. Hennum:** We believe that is the case. We know that is the case.

**The Chair:** Could I ask some questions with regard to municipal bridges? The auditor talked about ensuring that municipalities were in fact undertaking inspections and that you were implementing a system to ensure that municipalities were undertaking these inspections. Is that correct? I believe those were in your opening remarks.

**Mr. Rafi:** Yes, you are correct. The auditor does say that we should obtain adequate assurance that local governments have appropriate systems and procedures in place.

**The Chair:** As I also understand from your remarks and from what the auditor said, you bear no responsibility in terms of ensuring that a municipal bridge is up to standard at this time. I'm hesitant in terms of leaving the issue up in the air as to whose responsibility the bridge is, and the safety of the bridge. In my understanding, it's a municipality's responsibility to ensure that the bridge is safe to go over.

**Mr. Rafi:** In fact, under legislation, that is their responsibility, and always has been.

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**The Chair:** OK. So then do you divide the responsibility between the ministry, the government of Ontario and the municipality if a municipal bridge falls down and there is injury or harm or whatever? How are we going to ensure that doesn't happen without taking the full responsibility of control of the bridge?

**Mr. Rafi:** We feel we've done several recent important measures, not the least of which is the bridge management system and the Ontario structure inspection manual. We've provided both the system and the manual both through education and free of charge to municipalities for them to use, because varying municipalities with

varying sizes may not be able to afford the technology that helps them to inspect and monitor bridges and keep their inventory updated and current.

In addition to that, the OSTAR fund that you would be familiar with, as well as the most recent COMRIF fund, provide for municipal monies through application by municipalities for bridge maintenance, road maintenance and road enhancements. These are municipalities that are much smaller and perhaps wouldn't have the resources themselves, or if they did, they would have to take several years to build those resources in their reserves.

Lastly, our work with the Ontario Good Roads Association, which represents over 90% of the municipalities, has transmitted this information across all municipalities that are interested. In the COMRIF round of applications, I can tell you that over 67% of the municipalities that applied had some form of bridge inspection and asset management plans already in place, and COMRIF can help to supplement and improve on those.

We've also tried to pressure and work with the federal government to ensure that a portion of those COMRIF program funds are allocated to the development of asset management capacity in municipalities. So we haven't said, "That's your legislative responsibility," and turned our backs or walked away from them whatsoever. In fact, given our leadership role in the country, we've worked with municipalities and will continue to do so. We take that responsibility seriously.

**The Chair:** I guess my real concern here is how we're going to help municipalities fix the problem. We've talked about the downloading of some of our provincial highways, but they basically landed on county government shoulders, and county governments are better able to meet the challenge perhaps than the lower-tier municipalities.

Some of the lower-tier municipalities have minimal taxing power. I think Lanark Highlands, which I represent, has 45 bridges or something like that in this lower-tier municipality. Many of the roads aren't paved. They still have crown land in their municipality. Notwithstanding that we may get a report that they have inspected or not inspected, from what I'm hearing, you're not looking at the inspection report; you're just asking them if they've inspected. Is that correct?

**Mr. Rafi:** No, we're giving them the tools actually to ensure that they can inspect, that they have an asset management plan. In fact, at the county level in Lanark, I'm pleased to say that they do have an asset management plan in place that monitors their bridge and road network so they can do what we're trying to do, which is to do early rehabilitation and maintenance so that their costs don't balloon later on. We have taken several tools to help them in that regard.

**The Chair:** County is one thing and the local municipality is another. It's mentioned your assessment is the BCI. You use an assessment—

**Mr. Rafi:** Bridge condition index.

**The Chair:** Yes. Are the municipalities and the counties doing that as well?

**Mr. Rafi:** Some are, very much so. As you mentioned, the larger ones that have a very sophisticated approach, or a relatively sophisticated approach, will probably be applying that. Others are using perhaps more basic asset management tools. As they improve and get more comfortable with the bridge management system, they too will be able to apply those indices as necessary.

**The Chair:** The ministry had a bridge over the Montreal River. I don't know whether it totally collapsed or partially collapsed, actually. Notwithstanding the welfare or the taxing power and the budget of MTO, that was very much a latent defect that probably would not have been revealed on an inspection. But we've got many thousands of bridges that are the responsibility of counties and municipalities. At some point in time the province, or the province and the feds, is going to have to jump in and deal with this particular problem. I just wonder whether or not we should be, at this time, trying to establish where the priorities are going to be when we jump in.

For instance, in the county of Renfrew they have a bridge that, as I understand it, should be replaced in the not-too-distant future. In order for them to do that, it's going to take up a huge amount of the county's budget. Well, they're not going to be able to do that, so senior governments are going to have to come to their rescue.

Should we not, at this point in time, be trying to manage into the future and say to local governments, to county governments, "You should be on this BCI model, and here's some money to help you do it"?

**Mr. Rafi:** With respect, I think that's exactly what we are doing. Not only have we alleviated their need to spend on developing their own technology so they have the technology that allows them to apply that indice to their bridge structures, but we've provided funding, through OSTAR previously and currently COMRIF, so that when they prioritize that a particular bridge needs or bridges need rehabilitation, they make that application to those funds. Of the 350 applications that have been received this year, 62 are for bridge projects, and they are the priorities of that community, as distinct from perhaps a road priority, as distinct from perhaps some other infrastructure priority.

I think both the federal and Ontario governments, and especially the Ontario government, are trying to provide that assistance in both expertise and technology, which equals money, and in funds themselves to help those critical infrastructures.

**Mr. Zimmer:** Returning to a favourite topic of mine, and that's information technology and computer systems and so on: Over the last year and a half that I've been on this committee, various ministries have come forward, and one of the ongoing themes is the difficulty of incorporating new technology and getting new technology set up—the computer systems, and everybody speaking to everybody electronically and that sort of thing. We've heard stories ranging from horror to the comical about how information management systems have tripped up the best intentions and the best plans.

I take it, with your new asset management program, that a component of it is the latest information technology. How confident are you that you'll meet the challenges of getting the right information systems in place and getting it all talking to whom it should be talking to and so on? We've heard, as I've said, horror stories and comical stories on how the best-laid plans of folks have gone wrong in this regard.

**Mr. Rafi:** As you've alluded to, the success of any execution of information technology is not just the purchasing of the technology but it's actually the business process changes that go with effective implementation, so that you can both change the way you do business to harness the benefits of technology and then also apply that to make smarter, more informed and more effective decisions.

We can say with great confidence that we're going to have success, because we've pilot-tested this technology in our vehicles, the electronic diaries, the automatic vehicle locations systems. It's Internet-based now. Our supervisory and management staff have the ability to go to our Web site and an Internet site to determine and find out in real time where trucks are on the network. We're testing that in eastern region and are deploying that. We're deploying touch-screen technology in our vehicles so they can take, as the auditor quite rightly identified, electronic diaries so that you don't have these manual reports used in the past, because you can't then deploy that information and look for trends and look for analysis—to your point about management information and effective decisions. So we've done it incrementally

because we wanted to get it right, and I think we're on that path.

**Mr. Zimmer:** To the extent that a lot of this work is contracted out, what's the plan for getting the folks it's contracted out to plugged into the technology systems?

**Mr. Hennum:** We already have provisions in the contracts for this to take place. They sign off on that when they actually accept the assignments. Of course, some of these things are not yet fully developed, but indeed the contracts allow for us to introduce this into their operations as well. So we have looked a little bit forward to make sure we don't get locked out in that respect.

**Mr. Zimmer:** I wish you the best of luck, and I look forward to the conversation next year on how the management information technology systems panned out.

**The Chair:** Do we have any other questions?

**Mrs. Munro:** Actually, it's not a question. I just wanted to comment that Mr. Prue asked about the question of sanctions for the overweight and things like that, and simply put on the record that in my experience the individual truckers have extreme respect for the authority and the expertise of the people who manage the weigh stations.

**The Chair:** Thank you very much. We appreciate your coming here. Your clarity and directness have resulted in yours being the briefest questioning session so far this year. When we call you back next year, I hope it's even briefer. That's not a promise.

**Mr. Rafi:** So do we, Chair. Thank you for your time.

*The committee adjourned at 1123.*





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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 7 April 2005

# Journal des débats (Hansard)

Jeudi 7 avril 2005

**Standing committee on  
public accounts**

**Comité permanent des  
comptes publics**

2004 Annual Report,  
Provincial Auditor:  
Ministry of the Environment

Rapport annuel 2004,  
Vérificateur provincial :  
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COMPTES PUBLICS

Thursday 7 April 2005

Jeudi 7 avril 2005

*The committee met at 0943 in committee room 1, following a closed session.*

2004 ANNUAL REPORT,  
PROVINCIAL AUDITOR

## MINISTRY OF THE ENVIRONMENT

Consideration of section 3.05, groundwater program.

**The Chair (Mr. Norman W. Sterling):** Welcome again, Ms. West. Would you like to introduce the two people sitting with you to the committee? Do you have some opening remarks that you'd like to make?

**Ms. Virginia West:** I do. It's a pleasure to be back again with you all. I do have at the table here Michael Williams, who's our assistant deputy minister of the operations division, and Joan Andrew, who's the assistant deputy minister of the integrated environmental planning division.

I also have other staff with me here in the room to assist in answering questions, and among them: Allan Gunn, assistant deputy minister of the corporate resources division; Jim Smith, the chief drinking water inspector and assistant deputy minister of the drinking water management division; and Carl Griffith, ADM of the environmental sciences and standards division. Hopefully, we'll be able to answer any questions or provide any information that you're looking for today. I do appreciate the opportunity to speak again with the standing committee on public accounts.

The Ministry of the Environment welcomes the work of the Provincial Auditor. We see his views of our groundwater protection program as an opportunity to improve the way we deliver our services.

Groundwater protection is a key part of the Ministry of the Environment's mandate to ensure clean, safe, livable communities. Roughly three million Ontarians rely upon groundwater for vital functions like drinking, farming and manufacturing. Many municipalities use groundwater as the principal source of their water supplies.

The ministry remains committed to implementing all of the recommendations of the O'Connor report. Several recommendations pertain to groundwater.

As I noted, we do have with us members of the ministry's senior executive team to assist in answering questions for you today.

I will address the Provincial Auditor's report by looking at four key areas: groundwater management planning, groundwater quality monitoring, managing groundwater for sustainability, and inspections and enforcement. The Auditor General has made a number of observations and recommendations in each of these areas. I will use my allotment of time to focus on a sampling of specific recommendations and the actions taken by the ministry in response. In general, the ministry is pleased to note that many of the recommendations in the report are being addressed in our development and implementation of a province-wide watershed-based source protection program.

I will begin with groundwater management planning. The Auditor General calls on the ministry to review existing source protection plans and measures and to consider developing an overall strategy to protect the province's groundwater resources. Source protection is currently being undertaken on a voluntary basis.

The government has done a great deal of work on the technical and implementation aspects of watershed-based source protection planning. On June 23, 2004, the government posted a draft proposed drinking water source protection act. The draft proposed legislation establishes a framework for undertaking plan development.

Risk assessment will be a key component of the planning process. The government will establish specific assessment reporting criteria for the regulation. A provincial threat assessment process is being developed. It will be supported by technical guidance documents prepared by our ministry and the Ministry of Natural Resources. The source protection program will also include a monitoring and public accountability component focusing on high-risk areas, including groundwater supplies.

The Auditor General calls for better integration of information from groundwater management studies, including those done by municipalities. In the view of the ministry, the main purpose of groundwater studies is to provide communities with the information they need to take action to protect their groundwater sources. We will look to strengthen external partnerships to manage and provide access to the information that is critical to support local and regional decision-making on source protection.

The Auditor General recommends the establishment of a province-wide framework for monitoring water takings

so that continuously drawing down, or “mining,” of aquifers is prevented. We are working with the Ministry of Northern Development and Mines to ensure that information produced by previous groundwater studies is integrated and built upon through subsequent aquifer mapping. As part of the design and implementation of the provincial groundwater monitoring network, draft aquifer maps were prepared for the province’s 36 conservation authority watersheds and 10 consolidated planning areas.

With respect to farm nutrient management plans, the Auditor General recommends that the ministry review the compliance of farms that are required to complete plans by July 1, 2005. Further, the auditor recommends monitoring farms that are not required to submit a plan until after 2008 and identifying groundwater pollution sources on a timely basis so that remedial action can be taken before serious contamination occurs.

Farms are required under regulation 267 to submit nutrient management strategies and plans at different time frames, depending on the size of their operations. For example, new farms and farms expanding into or within the large category, producing 300 nutrient units or more, have been required to submit nutrient management plans since September 2003. Existing large farms are required to submit their strategies by July 1, 2005, and plans by December 1, 2005. All other farms are yet to be phased in under the regulation.

The ministry carries out incident response for all farms. This includes complaint response, spill response and advice or mediation relating to legislated and regulatory requirements. The ministry does this whether or not farms require nutrient management plans or strategies.

At this time, our officers are starting to carry out planned inspections at those farms currently subject to the requirements of the legislation. We will use this information to assist us in the development of a risk-based inspection program for large farm inspections. The risk assessment work is being carried out in conjunction with experts from the Ministry of Agriculture and Food and the Ontario Farm Environmental Coalition, an umbrella group consisting of the major farm organizations.

With respect to the recommendation regarding identifying groundwater pollution sources, risks to sources of municipal drinking water, including groundwater, will be identified using a provincially established threat assessment process.

The two advisory committees providing advice to the government on the implementation and technical aspects of source protection have developed requirements for undertaking an assessment report. These requirements will include standards for assessing both the quality and quantity of groundwater.

On the topic of monitoring groundwater quality, the Auditor General has made a number of observations about drinking water wells, groundwater from municipal works, groundwater from private wells and the provincial groundwater monitoring network. The auditor says the ministry should verify that people installing new wells are licensed well contractors.

## 0950

Ontario’s standards under regulation 903 for well construction, maintenance and abandonment now match or exceed other leading jurisdictions in North America. The regulation states that all persons installing new wells are to be licensed well contractors.

The ministry uses several methods to clarify the requirements of the regulation and make it an effective tool for drinking water protection for private well owners. For example, the ministry updated and made available four fact sheets on well construction. In partnership with the Ontario Ground Water Association, we have held multiple information sessions on the regulation for well drillers. We intend to provide more plain-language information on the contents and requirements of the regulation.

The Auditor General calls for random inspections of new, existing and abandoned wells to ensure that they are properly installed, maintained and sealed.

Regulation 903 sets standards for well siting, construction materials and methods for all wells, including private wells. When a well is constructed or abandoned, a record, including the well location, must be submitted to the ministry. The ministry will put procedures in place to ensure that well records submitted are by licensed well drillers.

The ministry has also undertaken a pilot project within the Ottawa area in order to develop an overall compliance strategy to ensure wells are properly installed and maintained.

The Auditor General states that the ministry should consider expanding its monitoring program to include a sample of private wells in high-risk areas and consider informing potentially affected users in the area of any adverse raw water test results.

The ministry has successfully established a province-wide groundwater monitoring network to monitor changes in water supplies and water quality on a regional scale in the major aquifers in Ontario. We will further review the current network with partner municipalities and conservation authorities to identify more specific areas that could be subject to stress and potential water quality problems and to optimize the network to address such needs. Assessing groundwater quality and identifying risks will be a key component of the assessment process within the mandatory source protection planning framework. The government will establish assessment report criteria for the regulation.

We are currently developing a provincial threat assessment process that will support the assessment and identification process. Source protection planning will also include a monitoring component, focused on high-risk areas, including groundwater supplies.

Through the source protection planning process, information related to measurements of the quality and quantity of surface and groundwater will be made publicly available, particularly to the local citizens who may be consuming this groundwater.

In addition, landowners with private wells residing in sensitive areas will directly benefit from source protec-

tion planning and implementation measures. For example, education and outreach programs will be put in place to ensure that landowners are notified that they reside in a sensitive area. The development of education and outreach programs by the ministry is consistent with the recommendations made by Justice O'Connor on source protection.

The Auditor General calls on the ministry to review the concentrations of high-risk substances—such as *E. coli* and other fecal coliform bacteria—in raw water, determine the sources of the contamination and develop remedial strategies to correct the problem. Assessing the quality of groundwater and identifying risks to groundwater will be a key component of the assessment process within the source protection planning framework.

The Auditor General also devotes considerable attention to the sustainability of groundwater supplies. He calls on the ministry to ensure the sustainable use of groundwater resources by enhancing the assessment and evaluation process for applications for permits to take water.

The government has taken concrete steps that will enhance its assessment and evaluation process for applications for permits to take water. One fundamental component is ensuring that the ministry receives and retains the required hydrogeologic studies for new permit applications. We are also moving toward a watershed approach to assessing the cumulative impact on the ecosystem that could result from the taking of groundwater by multiple users.

The new water-taking and transfer regulation announced by the ministry on December 14, 2004, ensures that the ministry directors follow stringent safeguards before issuing permits to take water. This supports Justice O'Connor's recommendations in the report of the Walkerton inquiry. The regulation clearly spells out the factors the ministry must consider in assessing water-taking applications. These factors include the impact of proposed water-takings on the ecosystem, water availability, proposed uses of the water, water conservation, mandatory reporting of water-takings, and enhanced notification to municipalities and conservation authorities.

The Auditor General says the ministry should monitor the actual amounts of water taken by permit holders to verify that they are not extracting more water than they are entitled to. While many permit holders currently monitor their water-takings and report them at the expiry of their permit, the new water-taking and transfer regulation requires annual reporting of water-takings to the ministry.

The auditor calls on the ministry to follow up on expired permits to take water to determine whether former permit holders are still extracting groundwater. As part of the ministry's efforts to improve overall inspections, the ministry has adopted a risk-based approach for inspections. A project is currently underway to apply this approach to permits-to-take-water inspections that will include an assessment of expired permits.

The Auditor General has also expressed concerns about the ministry's efforts to inspect for and enforce compliance. He calls on the ministry to review the results of its proactive inspections to determine why they have not been as effective as inspections conducted by the environmental SWAT team in identifying threats to the environment and human health.

As part of the ministry's efforts to improve overall inspections, we conducted a district risk assessment pilot in 2003. The results of the pilot were assessed to determine the best approach to implementing a risk-based approach for proactive district inspections. Using the lessons learned from this pilot, the ministry's operations division has introduced a risk-based district inspection framework with a community-based approach. It will identify threats to the environment and human health. The Auditor General says the ministry should develop and implement a more effective risk-based model for its proactive inspection program to target areas that have the most potential for detrimental environmental impact.

The ministry determines inspection locations by reviewing and analyzing incident reports. These reports are categorized according to risk and reviewed further to determine whether a single-medium, multimedia or site-wide inspection is warranted. The ministry also plans to establish a database that will provide diagnostic capabilities to further enhance the risk framework.

To help ensure the timely disposition of cases of serious environmental violations, the Auditor General recommends reviewing current procedures for sending referral reports to the investigations and enforcement branch. The ministry acknowledges the need to ensure the timely disposition of cases. The ministry's investigations and enforcement branch has completed a review of current incident referral procedures.

The auditor recommends taking necessary steps to lay charges and start proceedings within the two-year time frame required by legislation, and procedures have been put in place to address this recommendation. Our investigations and enforcement branch has also completed a review of operational procedures to expedite the laying of charges for serious environmental offences.

I want to conclude my remarks by thanking the members of this committee for their review of the Auditor General's report on the ministry's groundwater program. The Ministry of the Environment will continue to meet its commitment to addressing the Auditor General's concerns.

We're now prepared to answer any questions that you may have.

**The Chair:** Thank you very much. Could I just ask for a clarification? At the top of page 5, it says the ministry has undertaken a pilot project within the Ottawa area. Could you clarify exactly where that is?

**Ms. West:** Certainly.

**Mr. Richard Patten (Ottawa Centre):** It's in your riding.

**The Chair:** It may be.

**Ms. West:** I can understand your interest in it, Chair. Michael, can you speak to that?

**Mr. Michael Williams:** Good morning, Mr. Chair and members of the committee. My name is Michael Williams.

What we're doing with Ottawa is we're looking at ensuring that in rural areas, the wells are constructed by licensed well drillers, so that when an individual comes in for a building permit or an amendment or something to do with respect to bylaws, the city of Ottawa does another check and balance in the system to make sure that the well on that property is installed by a licensed driller. It's a project that we're just wrapping up and trying to learn from, so we can look at perhaps working with some of the larger municipalities.

We also have a smaller one adjacent, in north Grenville, that I could speak to later if you'd like.

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**Mr. Patten:** Good morning. It's good to see some old friends here for a while. I must have been around here too long.

Thank you for your report. I have a few questions to ask. One of them was a question that the Chair had asked just parenthetically. Presumably, the purpose of that pilot is that if there is an opportunity to engage with municipalities that have some responsibilities already, certainly around construction of wells or installations—industries, commercial, whatever it is—related to waterways or aquifers, is there a way in which the province and, I would imagine, even the federal government, if we're talking about rivers, can engage in a way that isn't overly burdensome or overlapping or confusing in being able to clearly enforce or assign or share the responsibility to protect the environment?

**Ms. West:** Absolutely. One of the things we want to continue to improve upon or recognize is that where there are shared jurisdictions, those who are subject to the regulations don't have to concern themselves so much about who's doing what, but that we try to integrate our approach with the other jurisdiction. Obviously, in this case, it's the municipality that has related regulatory responsibilities—at the federal level as well, on other files; we are also trying to integrate that.

Michael, I don't know if you want to talk a little bit more about the city of Ottawa.

**Mr. Williams:** As I mentioned previously, we looked at the city of Ottawa's potential partnership for one of those pilots. The other thing that we did was with Oxford on the Rideau and North Grenville. We actually went a little further with that one, whereby in previous years their building and bylaw enforcement staff were designated as officers under our legislation. They would go out and they would actually conduct inspections relative to what the homeowners had there with respect to water supplies: their wells, how they were constructed, whether the people were licensed when they came in to do it. We found that there are a number of municipalities, ranging from the small rural ones to the larger urban ones, that are willing to partner with us like that. So we're looking at whether there's some potential to formalize some of those arrangements in the future.

The other thing that we wouldn't want to lose sight of is there are associations, for example, the Ontario Ground Water Association, comprising all the licensed well drillers across the province, and we work with them in partnership too, to make sure there are materials distributed to homeowners.

For example, if you'll permit me, I have a kit here called the Well Aware kit, which consists of a video that is produced, along with brochures and fact sheets. I'd be pleased to leave it with the committee. Those are in plain English for the landowners to take a look at and see what their responsibilities are with respect to wells. That is distributed by the Ontario Ground Water Association members. Whenever a well is drilled, they're required to leave that with the homeowner too. So there are a number of different ways that we can partner to help rural landowners be more aware of their responsibilities.

**Mr. Patten:** I have a few questions related to the aquifer mapping. There are a number of ministries that are interfacing. I was reading that the Ministry of Northern Development and Mines, for example, had done some mapping even in the 1970s. MNR is involved, the Ministry of the Environment is involved, and the Ministry of Agriculture is involved, which I'm sure is the basis on which there would be another interministerial committee to look at this.

Is there a central place for the database? Is it shared? If it is shared, how do you interface with the data you have, some of which is historic; the updates in computer programs' capacity to monitor, presumably, which also means not just drilling a hole once; how do you know the replenishment factor of groundwater and the quality of it and all that kind of thing?

**Ms. West:** I'm going to ask Carl Griffith to respond to that specifically. Let me just acknowledge, as you've acknowledged, that in terms of addressing an issue like groundwater protection, this goes across ministries. Even the Well Aware program was done in partnership with the Ministry of Health as well. So we are aware of that. We have to work hard at those integrations, making sure that we don't do things twice, but also don't leave gaps.

Carl, maybe I can ask you to speak specifically to the aquifer mapping program.

**Mr. Carl Griffith:** Good morning. My name is Carl Griffith. Yes, we are working very closely with the Ministry of Northern Development and Mines and other agencies and groups that have information that will feed into our aquifer mapping or our understanding of groundwater quality and quantity.

In the deputy's opening comments, she made reference to the fact that right now we have draft aquifer maps across 36 conservation authorities and 10 municipalities. Ten of those have been finalized and are on the ministry's Web site now. We hope that the remainder of those will be done in late 2005 or early 2006.

I would also like to make reference to the fact that two very important studies have been completed and are on the ministry's Web site. I just need to refer to my notes. They are the Hydrogeology of Southern Ontario, and an

assessment of the groundwater resources of southern Ontario. Again, those are currently up on our Web site, and we make every possible effort to share this information with those who need it.

**Mr. Patten:** Presumably, some groundwater locations replenish themselves more rapidly than others. How can you monitor that, especially with permits that enable it? Presumably, that kind of analysis is done when or if companies are given permits to extract water which isn't surface water; in other words, it's groundwater.

**Mr. Griffith:** If I could speak to the first part of your question, we do have the provincial groundwater monitoring network in place, which does monitor change in water quantity and water quality due particularly to land use or land development matters. We have over 380 instrumented wells across the province right now, and that is across the 36 conservation authority areas and 10 municipalities.

Water quantity is measured on a real-time basis, and for water quality, we take samples twice a year. We are currently analyzing the water quality information that is coming in.

**Mr. Patten:** Is that from your own drillings or a combination of wells and—

**Mr. Griffith:** It's a combination of using historical wells that we've had to take measures—I'm really getting a little out of my depth in terms of exactly what we did to make those wells usable for monitoring. For some abandoned ones, we had to effect measures to make them usable. Some had to be redrilled.

We're also looking to add, I think, about 32 new wells over the next year, primarily in northern Ontario.

**Mr. Patten:** The more we study these, what is some of the anecdotal learning that we've found? In other words, I'm thinking it would be interesting to know—there are probably some small aquifers, and there may be some large ones that extend well beyond, maybe through two municipalities. They may go 10 miles; they may go 200 miles. What kinds of things are you discovering as you research all this?

**Mr. Griffith:** Could I ask my colleague Ed Piché to come to the table, please?

**Mr. Ed Piché:** Good morning. I'm Edward Piché. I'm the director of the environmental monitoring and reporting branch.

In particular, as you can probably appreciate, the first thing we're learning is the exact location of many of these wells. Some of these wells had been abandoned for some considerable period of time. They were, for the most part, dysfunctional. As I'm sure anyone who's familiar with the complexities of groundwater knows, it's a somewhat inexact science and it's an evolving science; to some extent, perhaps, even an art. I guess one of the lessons that we're learning is that Ontario is blessed with a very, very significant amount of water, good water for the most part, except for perhaps a few areas.

The partnership communities that we're involved in have worked very co-operatively and harmoniously, as I say, in locating the wells, in meticulously refurbishing

the wells and in installing state-of-the-art monitoring equipment which, I might add, actually monitors the quantity of water in real time, stores it electronically and then telemeters it into a central agency, so the next time there are any major climatic changes or other land use disruptive changes or significant changes, we will be able to see that in real time.

I guess the other lesson that we've learned is that it's expensive to do this properly. We consistently underestimate the amount of energy, time and resources to find them, to refurbish them and to maintain them. We're extraordinarily fortunate there, because the conservation authorities and municipalities have been more than willing to provide necessary people resources to help us do this. So I guess lots of good water; found the wells; a significant commitment of time and energy to refurbish them; and good feedback on their success.

As a consequence, we're now expanding the program to other parts of Ontario where there are not conservation authorities, and looking at other arrangements, either with other ministries or municipalities or other willing and competent associations, so that we can expand.

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**Mr. Patten:** I'll pass it on to my colleagues, but it seems to me we have the makings of a possibly tremendous documentary or feature film. Even when we talk about the impact of Walkerton and the pressure it has placed on all of us, particularly your ministry, it is certainly extracting tremendous amounts of resources, which makes it difficult. I sometimes think that risk-management assessment is often—well, when you don't have all the money you really want, you've got to prioritize and get after those areas that you estimate to have potential impact on populations or on the natural environment itself.

**Ms. West:** I agree. I know, Mr. Patten—you may want to pass it on at some point—you asked a question with respect to the recharging of aquifers. We do have someone who could speak to that, if you want, or later on if you want to go back to that question.

**Mr. Patten:** I was interested. I think it's an important question, because we need to know whether we have the sustainability, and the technology to measure that sustainability in replacement factors.

**Ms. West:** Ian Smith is our director for source water protection. Perhaps Ian can speak to that.

**Mr. Ian Smith:** In terms of recharge to the aquifer, in co-operation with the Ministry of Natural Resources, we've recently launched with the conservation authorities—so that would cover most of southern Ontario—a comprehensive water budget development program that will include determining the amount of recharge into the groundwater, and also those areas on the landscape that contribute the maximum amount of that recharge, because in some areas it's mostly runoff and in other areas it infiltrates and becomes groundwater. We'll feed that information into the source protection planning process so that we protect those recharge areas, to make sure that the aquifer that people are using for their drink-

ing water is sustainable. We anticipate that that information will also be useful for our permit for the take-water program, to ensure that our permit provisions are protective of the resource as well.

**Mr. Patten:** Just one final question on that. I was reading somewhere recently that Mexico City, for example, is sinking because it had paved over so much of the poor part of the city, which was sitting on this aquifer, that it was depleting the level of the water table. Is that part of what you do as well? Are you able to monitor or measure or test or take samples, not just in areas outside that are obvious, in the agricultural areas or near the cities, but also within cities?

**Mr. Smith:** There are computer models that the water budget people use to estimate based on what they call the percent hardening, which would be the paving. Deforestation is also a piece of the hardening aspect. They can use those models to try and get a sense, based on the soil type and the amount of hardening, of how much of the rainfall runs off versus how much recharges. Then they integrate all that information over the surface that contributes to that particular aquifer, which actually gets quite complicated, because of course there are shallow aquifers and deep aquifers, and then they're connected to each other. Part of our weakness in the information is understanding the connections between the shallow aquifers, which we understand fairly well, and the deeper aquifers, which are much more difficult to study.

**Mr. Patten:** My final comment is, it seems to me there's an incredible opportunity for public education here that would truly be fascinating. Certainly, I think students would find this interesting. That's why we get a lot of interest in the environment from high school students and even elementary school students. But I think the general public, learning some of the intricacies and fragility of our environment and how it's all interrelated, above surface and below surface, would be—of course, I guess it's for the government to decide to put some resources in that area. The more I learn about it, the more I think, "Wow, this is really fascinating and very important, how everything is interconnected."

**The Chair:** I have Mr. Zimmer next. How long are you going to be, David? Do you have many questions? Would you rather I rotate first?

**Mr. David Zimmer (Willowdale):** At your pleasure, Mr. Chair.

**The Chair:** I'm going to ask Julia next, and then I'll go to Marilyn. The Liberals have used approximately 15 minutes.

**Mrs. Julia Munro (York North):** Thank you for coming in today. Actually, some of the questions Mr. Patten asked have stimulated me to think, "Oh, wait a minute, there's another idea here."

On the last point that was referenced, with regard to the opportunities for public education, I think most people understand surface water; I'm not sure that as many people understand groundwater. I wondered whether within the ministry there's conversation with regard to the public perception of one over the other and

whether, from a ministry perspective, you would place a priority between those two.

**Ms. West:** In terms of public education or concern for risk?

**Mrs. Munro:** Concern for understanding or preservation or in terms of fragility, which I understand is greater in groundwater than in surface water. Those are the two questions.

**Ms. West:** Maybe, first of all, I can just respond broadly to education and outreach, and then invite Ian or Joan—we'll start with Joan—to respond to your question about the differences between the two.

One of the things we did try to do in responding to Justice O'Connor's recommendations on addressing source water protection is recognize that because it is a complex area and there are lots of partners in terms of addressing the problems, education and outreach are an important part. So we did quite deliberately think of trying to invest some modest resources as well in education and outreach.

I think the comments that have been made are quite valid in terms of educating broadly the general public—obviously the regulated communities—as to what their concerns are, what their responsibilities are and how they can address them. We are trying to take that into account as we move forward with the framework and with implementation.

With respect to the approach to groundwater versus surface water, I'm going to invite Joan Andrew to speak to that first, and she can invite whoever she wants.

**Ms. Joan Andrew:** We did work with Conservation Ontario specifically, and they produced a brochure that they were fairly successful in getting as an insert in a lot of daily newspapers last fall. I think it was on source protection, but it was particularly referencing both surface water and groundwater. They've been doing some of that work and trying to do more outreach in local communities across the province related to that.

As we move forward on source protection planning, part of what we are hoping to be able to do in providing resources, and what the Minister of Natural Resources and our minister announced last December in providing resources to conservation authorities, is to start giving conservation authorities the capacity to hire more scientific expertise, to understand better some of the linkages between surface water and groundwater and to understand some of the complexities.

I'll pass it over to Ian in a minute, but also the technical experts committee that the ministry had over the last year looking at source protection was made up of scientists, academics and practitioners who had done some of this work. I think, a little bit, the more we understand, the more we learn what we don't understand about water, even from a science basis. It's not so much government, but the scientific community. Also, there are breakthroughs all the time about new ways to do modelling and to look at these. I can turn it over to Ian for some of the details.

**Mr. Smith:** Actually, the note that my boss just handed me was a reminder that we also worked with

Pollution Probe on a primer on source protection which was released in mass distribution last summer. It included a section aimed at the public, intended to educate on the importance—actually, I hearken to a concept in cottage country, which is, they don't make any more shoreline. We really don't make any more groundwater either. It's a very fragile resource, and our technical experts committee, which worked with us on source protection, recommended that we treat groundwater as essentially a finite resource, because we do understand it so poorly. They did highlight that we've spent many, many years protecting surface water, which replenishes itself quite quickly, and they did recommend that we put a very strong priority on protection policies for groundwater, which of course is what we're intending to do with our source protection program. It's intended to highlight those groundwater areas that are sensitive or vulnerable and then to bring forward protection policies and plans to protect those so that they will be there in—it's important to recognize that much of the groundwater that people use is 30, 40 or 100 years old. We need to be putting policies in place today to ensure that that water is there if we need it 30, 40 or 100 years in the future.

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**Mrs. Munro:** I appreciate your response. It is why I used the word "fragility," because I felt that was something that you've responded to as well.

In the earlier questioning, there was discussion about the wells that are being monitored across the province. I wondered if you could give us—I realize it's early in the process—a sense of the kinds of projections you're looking for from monitoring these wells over a period of time. I presume we're talking about both quality and quantity. I wonder if you could give some plain-language ideas about what you might expect to see after you've watched five or maybe 10 years—whatever time frames are appropriate.

**Ms. Andrew:** I'll turn it over to Ed in a minute. I think we're looking at both quantity and quality issues, but also at whether or not and how much some basic things like phosphates and nitrates have permeated into the groundwater. I'll turn it over to Mr. Piché.

**Mr. Piché:** I'm Ed Piché, director, environmental monitoring and reporting branch.

I'd like to backtrack a little bit, because there is a linkage between surface water and aquifers. The key thing is the depth of the aquifer and the soil conditions governing the capacity of the surface water, for the most part, to percolate or move down into the aquifer. If it's a shallow aquifer, it can be years to decades; if it's a deep aquifer, it can be tens of thousands of years.

So there is a linkage between surface water and groundwater. It depends on, as I said, time and the structure of the earth over top of the aquifer. So when you're looking at what's more important, you really want to protect the surface water as best you can, because ultimately that surface water gets into or permeates into the aquifer. It's just a question of time. Fortunately, if

it's deep, you have a long, long period of time, but you still have to be careful.

What are we looking to monitor for? As Ms. Andrew said, we're looking for infiltration of materials, substances or chemicals that are not desirable, that will adulterate or contaminate that water, whatever they may be, whether it's radionuclides, biological agents, chemical agents or whatever. We're also looking for the impact of climatological change: If we have a drought, what impact will that drought have, especially on shallow aquifers, if those aquifers feed people for industry, animal husbandry or just general, everyday domestic use?

It's complicated. It's linked together. We're monitoring it in real time so we can provide the very best information to our society, for the decision-makers to make timely and effective decisions.

**Mrs. Munro:** I have one question that I'll use at this point. You made reference in your remarks to working with well drillers. I just have a question about dug wells. Do you have any idea of the percentage of dug wells, and what kind of impact they have versus drilled wells? Are dug well diggers now obsolete?

**Ms. West:** Good question. I'm just seeing who might be able to help respond to that. I'll bring back Mr. Piché.

**Mr. Piché:** Let me understand the question again. You want to know if there is a preference for one or the other, or whether one is obsolete or not?

**Mrs. Munro:** Yes, basically, because in the remarks there's only reference made to drilled wells and well drillers. I thought, "OK. Where are we in terms of dug wells?"

**Mr. Piché:** I'd like to take us back a little bit, if we can. A post-Walkerton concern of the broader society is to provide water that has the highest level of integrity. So in the construction of a well, whatever construction method is used, the intention is to provide the highest level of integrity of water. When the professional comes to the site, they bring their training and judgment and experience, whichever method they use, to construct a well that will give the highest level of integrity of that water. So that's the premise that I would use. Now, whether it's one method or another—my area of expertise is not in the construction of wells—what I can tell you is that that's the whole purpose of the regulation, to establish and maintain an industry in Ontario that is trained and educated to provide the highest level of integrity.

*Interjection.*

**Mr. Piché:** I'm getting some counselling here, some wise counselling.

Do we track the frequency of each? Yes, we do. Documentation is filed that tells us explicit details. In fact, it's an interesting history lesson here. The early pioneers were obviously very wise, because they tracked, as you drill down, the soil type and structure. And it's that very body of evidence, where there are 600,000-plus records, that allowed us to publish this report that Mr. Griffith referred to earlier that tells us about the extent and

quality and quantity of groundwater. Without that data and very skilled and trained individuals, we wouldn't have been able to do that. So yes, we are tracking that.

**The Chair:** I'm going to ask Marilyn next. But does anybody have any specific questions or supplementaries on that that they wanted to—it's difficult here when you're trying to break up the time and trying to keep it somewhat subject-oriented.

Marilyn, go ahead.

**Ms. Marilyn Churley (Toronto-Danforth):** I have a number of questions, but I thought I would focus a little bit on aggregates and the water-taking aspects of that. Before you came in, we were talking a bit about this with the Auditor General. I wanted some clarification around water-taking for aggregates because he does say in his report that it's one of the very large water-takers. Do you have somebody here who could do that?

**Ms. West:** Are you talking about the new policy with respect to—

**Ms. Churley:** Maybe what I should do is pose my questions and then figure out who can best answer them.

One of the things he said is that although it's one of the largest water-takers, it's not such a big problem because it puts back into the ground, it pumps the water, after the dewatering, back in. But of course that's not, as I said to him—and I didn't mean to imply it was simple. As you know, it's much more complicated than that. I have a couple of questions around the environmental impacts.

First of all, I'd like to ask, do you have any idea of the range of water-taking permits, like litres per day, for large aggregate operations in southern Ontario? It's in the millions of litres per day; is that correct?

**Ms. West:** Michael Williams would have that information.

**Mr. Williams:** Yes, I do have that information. I'll refer to my notes, if you don't mind.

**Ms. Churley:** That's fine. I'm referring to mine too.

**Mr. Williams:** When we look at quarry dewatering and aggregate washing—and I believe that's what we're talking about, essentially, with respect to pits and quarries and the operations there—the daily average, and it's expressed in terms of millions of litres, for dewatering quarries is approximately 10 million litres.

**Ms. Churley:** That's per day, right?

**Mr. Williams:** Per day. For aggregate washing, it's 8.8.

**Ms. Churley:** That's 8.8 per day.

**Mr. Williams:** That's millions of litres on a daily average.

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**Ms. Churley:** I just wanted to get some clarification around the implications from what you know and why this kind of water-taking does damage the groundwater systems. It isn't as simple as, you take it out, you put it back in, because we know that the aggregate deposits act as underground reservoirs, and once the aggregate is excavated, the water storage capacity is lost. As you know—I got this from a lot of reports—pumping ground-

water into injection wells that they're starting to use will artificially maintain the wetlands while operations are underway.

I'm just giving you some of the facts around this so you can explain, actually, why it's not benign—taking water out in these activities.

**Mr. Williams:** OK. Let's give it a try. We'll see how we can do with it.

I take note of your comment that it's not benign with respect to these activities, and I think that's a really important observation. The role of our ministry and our staff in the field offices when we deal with permits for aggregate operations, whether they're dewatering quarries or whether they're washing of aggregate—we work with the Ministry of Natural Resources. The Ministry of Natural Resources licenses aggregate operations, and one of the parts to their licensing is ensuring that our ministry and our staff in the field office who review aggregate licence applications send in their comments to MNR, to make sure that the environmental impacts of those operations are minimized.

As you suggest, there's no such thing as no environmental impact with respect to a water withdrawal or putting water back. I would go back to one of my colleagues who spoke a few minutes earlier about it. One of the most important things on this is to ensure that there isn't contamination as a result of the washing of the aggregate and so on, that there are proper retention ponds, that there are settlement ponds, so that the aggregate washing operations don't impact the water as that water is returned to the natural environment. We do that through terms and conditions on our permits to take water. We also make that information available to MNR when they issue the aggregates licences.

That's one of the ways that we try to have controls on those kind of water-takings and minimize the environmental impacts of them.

**The Chair:** Could I interject here? The number you're quoting here is much smaller than the number which we received from the auditor, in the range of 1% of what we've heard before. Can you check that number? You said 10 million.

**Mr. Williams:** Millions of litres, yes.

**The Chair:** That's 10 million litres a day?

**Mr. Williams:** The daily average for dewatering of quarries is 10 million litres, and 8.8 million litres for aggregate washing. Now, that's the average for those particular uses. The other numbers that we will have—and I have some other numbers that I'll share with the committee—is what's the permitted maximum volume that could be taken. That's a different set of numbers. For example, what I believe the committee may have—I'm sorry; I'm referring to my notes here—is dewatering, which includes aggregates, pits and quarries, and construction projects. I'm sorry; I don't know the breakdown between them. The figure I have is 232 permits issued for those, and there are 2.08 billion litres per day. That's what the paper permit actually permits. Those are the numbers that are on the paper permit. So I just have the

breakdown that I was sharing: the millions of litres per day for quarry dewatering and aggregate washing. I think that's where the difference is.

**Ms. Churley:** You'll add that on to my time.

**The Chair:** Yes, I will.

We've talked about nine billion litres a day in the auditor's report.

**Mr. Williams:** Yes.

**The Chair:** Then, of that, we were given to understand that two billion litres a day were involved with the aggregate industry. So in trying to estimate what the percentages are, I'm thinking to myself, and I guess other members of the committee are thinking, "Well, approximately 20%, 25% of the water that is being used is by the aggregate industry." It's sort of a contextual argument.

**Ms. West:** I understand the need to have that context. I'm just wondering, as people try to compare numbers, can we just, behind, have someone go and talk to the auditor and see—

**Mr. Jim McCarter:** Just by the looking, the number that I gave the committee, as far as a breakdown of the nine billion litres, I'd indicated that, surprisingly to us, one of the big uses was the gravel pit quarries. In permits, it was well over a billion litres a day. We didn't have the data on the actual takings. But we were indicating that you're up 10%, 20% from the aggregates with respect to permits.

**The Chair:** So that's permits. But actual use is much, much less.

**Mr. Williams:** The actual use would be less, but we don't know the actual amounts—

**Mr. McCarter:** We didn't have the data during the audit either.

**Ms. West:** Let me just ask Joan to speak to that, because this is part of the evolution of the program in terms of collecting data on actual use.

**Ms. Andrew:** The new permit to take water regulation that has just come into effect requires people to track their actual use and report to us in phases, starting this July. So as of July, municipalities and water bottlers start tracking, and report to us as of next March. Then it phases in over a period of time, giving agriculture a few more years.

The first phase is municipal drinking water systems, major industrial dischargers, which I think for us is regulated under MISA, and water-takers that were impacted by the moratorium. They have to start monitoring on July 1, 2005, and reporting by March 31, 2006. The next phase is other industrial/commercial sectors and wildlife conservation, which start monitoring on January 1, 2006, with reports by March 31, 2007. Then agricultural takings and others start monitoring in January 2007 and reporting by March 2008. That will give us much better data on the actual use, as opposed to the permitted amounts.

**Ms. Churley:** I think that answers one of the other questions I had, that we don't know the exact number, and that work is being done. But that's one of the prob-

lems that has been identified in terms of water-taking overall, that there are still a lot of questions unanswered. I understand the ministry is working on that.

**The Chair:** Could we just ask for a response?

**Ms. Churley:** Oh, sure.

**Mr. Williams:** If I might, Mr. Chair. I apologize, Ms. Churley, if I've misspoken in any way to make this misleading. I want to clarify that when the discussion was about aggregates, dewatering and putting stuff back on to the ground and that, the numbers I was referring to were a representative sample. So what would happen in a quarry in a day to dewater a quarry, as a representative sample, was 10 million—not across the province for all of them. The Auditor General's figures that we have—when I used the B word to talk about billions, I wanted people to understand that that is the global number that we have for all those kinds of operations, which includes construction projects. I'm very sorry.

**Ms. Churley:** I did understand that, but I guess a clarification was good. For me the bottom line is, it's an awful lot of water. The auditor himself said that he was surprised at how big a piece of the water-taking it is. The reason why I'm asking about it is because of concern that there's not a lot of understanding about how detrimental this can be to the environment.

I was starting to say that in some cases—and I get this from the report of the Environmental Commissioner, who, for instance, as you know, has twice brought this issue up, as well as the Pembina Institute. So it's a major concern that I don't think we're dealing with very well. I mentioned that the water storage capacity is lost as well once the aggregate is gone. But in some cases, as the Environmental Commissioner points out, a large portion of a stream's volume is derived from groundwater, which maintains a base flow for streams, and then base flow is important as it often ensures that stream flow is maintained, even in the very dry summer season. Hence, land disturbance from pit and quarry activities can negatively affect flow, even if the excavation doesn't extend beyond the water table.

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I'm just bringing this out more for the record, because I think we would all agree—and it's really, really important that we all understand—that it is not benign. When you take that large amount of water from underneath the groundwater table, then there are real consequences. It's just not a matter of taking it out and putting it back in and there's no problem. You would agree with that?

**Ms. West:** I think it was Ian who may have started off some of his comments by saying he's learned to know how much we don't know. You're quite right. This is an area that we will continue to learn more about. But certainly the principle, as you have stated it, Ms. Churley, is probably quite true.

**Ms. Churley:** I'm just wondering if I can follow up on those questions, because of my concern around this area. The provincial policy statement basically gives carte blanche to aggregate interests. That doesn't reconcile with the plans that you and the minister talk about for

source water protection. So it's source water or aggregates in accordance with the provincial policy statement.

I asked in committee during the Planning Act clause-by-clause that source water legislation be given paramount status, but that of course was not accepted. I believe if it had been, it would have helped deal with the prospect that aggregates will interrupt and damage the groundwater systems.

I guess my question would be, who is going to trump in the end, source water protection or the aggregates, and will it be written into source water protection legislation? Because right now my concern is, aggregates trump in the provincial policy plans, and it goes totally against the grain of what we're saying in terms of source water protection.

**Ms. West:** I'm going to ask Ms. Andrew to respond to that. Obviously, what we do try to do is work across the ministries and the various initiatives to see how they relate to one another. With respect to the provincial policy statement or others, certainly we have brought to the fore the connections and linkages to source water protection.

**Ms. Andrew:** Obviously, the formal legislation on source protection hasn't been introduced in the Legislature, so I can't presume to know exactly what would be in that, but we have been working at a staff level to work with ministries and to reflect Commissioner O'Connor's recommendation that source protection legislation would have paramountcy where that was necessary. So we have been working specifically with the Ministry of Natural Resources, the Ministry of Municipal Affairs and Housing and other ministries to ensure that where human health and environmental impacts were necessary, source protection would have paramountcy as we move forward from a policy point of view.

**Ms. Churley:** I guess you're saying that at the end of the day how that's dealt with within the legislation will be more of a political decision.

**Ms. Andrew:** I'm just saying that the legislation hasn't been formally introduced, so I can't presume to know exactly what would be in it.

**Ms. Churley:** But you would have had input in what—

**Ms. Andrew:** All the policy work that's gone on to date is about source protection having paramountcy where it needs to for human health and environmental reasons.

**Ms. Churley:** And that's all you can say at this point.

Can I ask you about the—give me a second, because I started at the end here. Perhaps we can move on, Mr. Chair, if you like, and then I can come back to another element of what I want to ask about.

**The Chair:** OK. Mr. Zimmer?

**Mr. Zimmer:** I listened with interest to your opening remarks, and it sounds to me as if there's a paradigm shift underway in the way in which we manage these environmental issues. In fact, in your remarks someone used the expressions "real-time management," "integration of information systems," "monitoring of informa-

tion systems," "access to information," "the critical sharing of the information," "reporting" and so on. Another remark: 36 watershed authorities and 10 consolidated planning areas.

My question has to do with an issue that I've been interested in for the last year or so, and it comes up whenever we have chats with ministries. That's the challenge of managing this new environment from an IT, information technology, point of view. I guess in your inter-deputy minister meetings you've heard of the various horror shows on IT issues that range from the comic to the horrific. What are your IT, information technology, management systems challenges? Are you confident that you're going to meet them?

Two particular questions: Can you give me some sense of what the IT budget was at the ministry, say in the days pre-Walkerton, what it is now and on a going-forward basis where you expect it's going to go in the next couple of years? I have quite a list of folks who have accompanied you here today. Is there anyone here who is specifically responsible for the management of the IT file?

**Ms. West:** First of all, I don't have anyone here who is specifically responsible for the management of the IT file, but we have people who can speak to it at a certain level, and if you want more information, we can follow up.

Let me just say with respect to data and information and technology support, that is a very important component of making this program successful, making any program successful these days, but particularly one that is so complicated, that carries responsibility information across ministries and across jurisdictions and to other partners in the community. We believe, as we've talked about knowledge and information and what we do and don't know, that data collection, understanding that as information and being able to communicate it well and to continue to keep it up-to-date, is an important element of moving forward.

As you may know as well, in terms of the organizational structure of IT within government now, it's done on a cluster basis. The cluster that we're included in is the one that includes the Ministry of Natural Resources, the Ministry of Northern Development and Mines and the Ministry of Agriculture and Food. In terms of the program area, it's an appropriate cluster of responsibility. So we do take advantage of that in terms of looking at the individual programs that support areas within those related ministries and seeing how we can link to and integrate with and rely upon that. Certainly GIS is an area that the Ministry of Natural Resources is doing an awful lot of work on. We look at how we can connect into that and make that better and more robust in terms of the reliance of the public, as well as ministries' program development. I agree, IT is a very important part of it. Over the past few years, as part of our response to O'Connor's recommendations, information systems is a part of that.

Allan Gunn, who is our CAO and assistant deputy minister of corporate management, is at the table as well

and can speak to that. I'm not sure that he can speak specifically to the issues on the budget at this time—we can follow up on that—because it has been changed in terms of how we organizationally structure for supporting IT within the cluster these days.

As a general comment again, it creates an important issue. It's an issue that we have to address in a very careful way. We've done it, I think, in an incremental way, which is probably the best approach in terms of getting something locked down but accessible for other linkages, because certainly I've been involved in programs that are much larger than that that are riskier in terms of actual success and implementation. Allan, can I ask you to—

**Mr. Allan Gunn:** Certainly. Good morning, Mr. Chair. I'm Allan Gunn, the CAO with the ministry. I'd have probably the most interface with our chief information officer who looks over the four ministries.

Let me first talk about the budget. I don't have the pre-2000 technology budget with me, but I can certainly table that with the committee as a follow-up.

**Mr. Zimmer:** For just some anecdotal sort of sense—

**Mr. Gunn:** The sense is, proportionately there's more money spent on technology now and more attention paid to technology. The technology funding that we address has a couple of components to it. It fluctuates from year to year, because some of the technology costs are one-time in nature in terms of the development of projects that are time-limited and then what you have after that is the ongoing maintenance and support and operating on it, depending on the nature of it.

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One of the things I could say in general, though, is that in the period of time you're talking about, what we have done in terms of a technological strategy is develop a technology platform referred to as Environet. Environet is an attempt to integrate all of the databases using a standard approach, a standard architecture, a standard integration that, as new systems come along and as they're developed, you look first to what exists now and integrate and build into that. Because we do work in a cluster across the environment and natural resources ministries, we don't develop something unique to the Ministry of the Environment if it already exists within the cluster, but you build on it.

For example, over the past two or three years, we've been working on developing the integrated drinking water information management system that has been building modules to respond to the regulatory requirements, to be able to capture information from the laboratories as the testing is done, moving it through the system to capture information about the municipalities who are the major waterworks owners, taking those components and integrating them from the beginning to the end, and using a similar platform for all of those.

So during the past couple of years, certainly in a post-2000 environment, the development costs have been higher than the ongoing maintenance costs, and we continue to then add on in modules to expand the tech-

nology, the technology based. I think the biggest piece of that that's been the advantage to us in managing the resources is putting all the resources into the technology cluster and using OPS-wide technology supports through the chief information officer of Ontario and their supports at Management Board to focus on the technical supports—the wires in the boxes, if you like—to keep it going, and keeping the focus within the cluster on the specific needs of the programs that focus directly with the delivery of whatever the policy needs in support at the time.

**Mr. Zimmer:** Just to follow up with a couple of short questions, we're all agreed that one of the elements here is real-time management just because of the nature of things that affect the environment and how quickly they come on.

Three questions: I'm assuming, then, you agree that if all of these good things are going to happen, one of the things it's predicated on is good IT and very fast IT reaction turnaround time, if you need new IT programs. So my question then is, if you do find that you need some unique IT initiatives that are not available in the cluster, what's the turnaround time for getting those up and running?

My last question is just an opinion, and it might be awkward. Are you prepared to say today how confident you are that, in a reasonable case scenario, the ministry is up to the IT challenge, or the government is up to the IT challenge? Because I've been here, a new member, for about a year and a half, and I hear about these IT horror shows. I have a sense that sometimes the best plans of men and mortals and politicians and civil servants flounder on the rocks of this IT issue.

**Ms. West:** I'm going to ask Allan to respond just as I comment to the last comment that you had.

We've learned a lot over the years in terms of IT and IT implementation. I think, as Allan has noted, the approach in terms of the modular approach to our current program is the best approach because it does give you a chance to implement something, assure yourself that it is effective and assure yourself that it can be enlarged or enhanced or linked to others, rather than planning for some very large program and project and not knowing until it's too late that it's successful or not.

I will say to you that I don't think we have any horror shows. Certainly, as always, we have room for improvement, and I think we've taken advantage of that as well. But we are quite watchful within the ministry of both the need for good IT technology and also the responsibility to ensure that we plan for it well, prioritize it well, resource it as well as we can and implement it with appropriate resources and oversight. So in that regard, I think we're up to the challenge. As with anything, we could have more, faster, more robust. But we're trying to manage with the resources that we can apply to this.

Allan, is there anything you want to add to that?

**Mr. Gunn:** I think perhaps from an anecdotal perspective, I could comment on the turnaround time that you're looking for. In terms of the modular approach and

where it has helped, I could share with you an example where recently there were some changes to the permit to take water program. What we were able to do was track the permits to take water: simply take a module that already existed, do some minor tweaking to it, plug it in and add it on in a fairly short turnaround time. That's the design of it.

The other thing is the structure using the clusters and the availability. One of the challenges—having been around a long time—I used to find in the early days of technology was actually getting the trained skills to be able to do the work. Now, with the cluster structure that's available and the OPS as an organization, there's more swing capacity to be able to take on board the technical experts who are already seasoned and experienced staff to reallocate them to the priorities of the day.

Those would be two examples of things that I think have allowed us, within our cluster and as part of the larger operations, to be able to respond to the technological needs.

**Mrs. Liz Sandals (Guelph-Wellington):** I'd like to talk about integration, perhaps in another area. There are a number of initiatives, and it seems to me that a lot of these things are interrelated.

First of all, let me congratulate you on the sort of watershed approach that you're taking to planning, because certainly in the area that I come from, in the Grand River watershed, there's a huge number of municipalities that all use that watershed, and to have it piecemealed by municipality makes no sense. The only sensible way of approaching the problem is to deal with it as a watershed. So congratulations on that approach.

It seems to me, however, that we've got the source water protection initiative going on, and looking at how we protect that whole watershed. We've also got the permits to take water; we're looking at that. I'm wondering, first of all, how those two things are going to be integrated, because I'm assuming that if you're going to talk about taking water, that's somehow got to relate back to source water protection, and also, how we relate all of that to looking at cumulative impacts on watersheds, because in the case that I'm dealing with, it's a huge watershed. There are all sorts of people. It's agricultural in some areas. There's a huge gravel extraction component in my riding. There's industrial use. So there's a whole range of uses, and then we, more than virtually any other watershed in the province, I think, rely on groundwater for drinking water.

So you have a huge watershed, a huge geographic area and a whole bunch of things going on within that watershed. How do we pull it all together so that we get sound planning, both surface water and groundwater, and water-taking and integration and cumulative impacts measured for that whole great beast?

**Ms. West:** Joan, do you want to respond?

**Ms. Andrew:** When the government issued the white paper on watershed-based source protection last February, the paper also contained discussions about the permit to take water and concepts of charging for water. So we

did integrate them in the white paper. There was a need to move ahead more quickly on the permit to take water because of the one-year moratorium. So the regulation related to permits to take water moved ahead in December so that the new regulations would be available for the lifting of the one-year moratorium.

But the view is very much as we move forward—obviously, watershed-based source protection is, if I can call it that, the larger framework in which things will operate. We do need, over time, to start moving some of the individual programs the ministry has operated as stand-alone programs into that framework.

It's also, a little bit, an issue of capacity-building in communities. So we're asking conservation authorities to take on a fairly significant role in source protection planning; we're asking communities to think about water uses they haven't thought of before. It'll be a matter of timing and phasing as to how we put on all the programs that need to go into source protection. Obviously, permit to take water is one that has to be closely linked to source protection from very early days, but there will be other linkages to source protection, like nutrient management. It's a matter of how fast things can roll out, what the community capacity is to absorb those, getting different industry sectors, municipalities, conservation authorities and agriculture all working together at a watershed-based level. I think the Grand River watershed is renowned in Ontario for being a little further ahead in some of its planning than other places. There are places where we could move faster and places where I think the capacity still has to grow a bit.

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**Mrs. Sandals:** And that may be just the reality of the fact that there are so many different—both upper- and lower-tier—municipalities involved, that the only sensible way to do it is—even historically—from a watershed point of view, just because there are an incredible number of players. We could think of source water protection as the overarching umbrella, and all these other projects as things that interrelate and hang on that overall planning umbrella.

Could we talk a little bit more about how we get at cumulative impact? I know that something that has become somewhat of a topic in my riding is the issue of cumulative impact on aggregate permits. If you look at, for example, a single aggregate operation as an entity in and of itself, it might be acceptable, but then if you have these all lined up beside each other, up and down the concession road, how do we think about cumulative impact? Is it from simply a quantity point of view? How do we go at talking about cumulative impacts?

**Ms. Andrew:** On permits to take water alone, we do talk about it on a quantity—under the new regulation, we did some mapping with the Ministry of Natural Resources to look at high-demand watersheds and what watersheds are more stressed. Under the new permit to take water regulation, there are actually different rules that can apply, depending on the demand that's already in the watershed and some of the mapping that we've done.

I know people talk a lot about industrial uses of water, but you also have to worry about things like—for municipalities—fire safety. There has to be enough water to keep those kinds of basics, and also irrigation for agriculture. So there are parts of the province where there's higher demand, and we do have to worry about the pure quantitative capacity, especially in the summer-time. But there is also qualitative stuff. It's not yet—I'll turn it over to Carl, who is in charge of sciences at the ministry—a perfect science. I don't think we actually do know all the interplays from a scientific point of view; it's not just a government issue.

**Mr. Griffith:** The comment I'd like to make is that through the provincial groundwater monitoring network, for example, we can begin to better understand the cumulative impact of what is going on in both quality and quantity. I believe that foundation of information can also help us when talking about integration of programs. We can begin, then, to better understand how we should be dealing with the issues that we're seeing through the monitoring network.

**Ms. West:** With respect to permits to take water specifically, and taking into account the cumulative impacts, perhaps Michael Williams can give you some information on that.

**Mr. Williams:** What the staff do at the field level is the last event in the chain, from planning, working with conservation authorities and working with municipalities, to getting right down to the issuance of the permit. The new rules require an ecosystem-based approach, so we need to look at water supply, water demand and all of the other environmental factors in the permit. Our surface water specialists and hydrogeologists factor in cumulative impact at that stage before they consider whether the permit will be issued or not, or, if it will be issued, what kinds of restrictive terms and conditions need to be applied to it.

As my colleague Joan said, there is a definition of watersheds—high-use, medium-use and low-use—and the terms and conditions our scientific staff would put on those on the issuance of the permit would vary depending which watershed they're in. That's how we practically, on the ground, build in a consideration of cumulative impact in the permits.

**Mrs. Munro:** I'd like to talk a bit about the conservation authorities. In the auditor's report there is information given to us about the fact that six of 36 had been able to provide plans and the others were outstanding. I realize there's a rather significant time gap between the time this information would be gathered and today, since we're talking about real-time reporting, so I wonder if we could have a little bit of conversation on that.

Also, from the information you have, how do you project what the information will give you as a planning tool? I think people in all of the watersheds are very concerned about this and often find frustration in the length of time that we understand the science is going to take. So I think it's important to be able to provide insight into how you would use the information you're

getting in terms of projecting, and what kinds of potential initiatives would come from the studies you're doing on that watershed basis. If you could do a little crystal-ball gazing for us as well, I think that would be helpful.

**Ms. West:** I'll let Joan speak to the studies that have been done and also some of the planning that conservation authorities have done and our thinking in terms of going forward with the framework for source protection planning.

**Ms. Andrew:** I think when the Auditor General was doing the work in the ministry, we were thinking about an approach where maybe some of the conservation authorities—like the Grand River Conservation Authority, which was further ahead in its planning—might, if I could say this, go out first on source protection. Since then, we've probably changed our mind about the approach we would take. The information we gave the Auditor General at that time was accurate in terms of how we were thinking, but when we released the white paper, we subsequently have been thinking about grouping conservation authorities together to help try and build some capacity so that we could help more conservation authorities move forward faster and look at a broader approach across southern Ontario.

One of the ideas behind the province-wide plan is that instead of having each conservation authority, we'd look at grouping conservation authorities. We'd look at watershed plans—I'll check with staff, but I believe it's using about 17 plans in southern Ontario—and have lead conservation authorities move forward on that. We'd try to look at an approach that might phase in the work over time to, say, municipal wellhead areas to start with and particularly vulnerable recharge areas, and then expand over time so that we're not asking people to take on everything in their watershed at one time, but look at some of the highest-use areas, like municipal wellheads, looking at protection zones for them and starting to protect the biggest part of the population as we move forward on source protection. I think we've somewhat shifted from when the Auditor General was speaking to a kind of broader-based approach, maybe phased within each watershed, so that you're focused on things like municipal wellhead areas first and some of the other high-risk areas in the watershed. That's the approach we're thinking of taking now.

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**Mrs. Munro:** I appreciate that. That's why I prefaced it by the fact that I understood the difference in timing. I appreciate the fact that this is a work in progress, and it's important for us to appreciate that.

I wanted to ask you, though, when you were looking at establishing those priorities in terms of municipal wellheads, for instance, and recharge areas, do we have data from other jurisdictions with regard to the manner in which others have approached this problem? It would seem to me that obviously other jurisdictions will face similar kinds of situations with regard to groundwater. What have we learned from others and what are we doing about what we've learned?

**Ms. Andrew:** We have, as best we can, learned from other jurisdictions. New York City actually instituted a fair amount of source protection, but our balance of groundwater and surface water is sometimes a little different, particularly in southern Ontario. An awful lot of us actually get our water from the Great Lakes, and lots of people have jurisdiction over the Great Lakes, so it's not entirely under our control. We have, to the extent possible, been learning from other jurisdictions, but it's not something that's always totally applicable to Ontario. I can turn it over to Ian Smith, who's done more of the technical work on it.

**Mr. Smith:** We have looked at a number of jurisdictions, including New Zealand, Australia, Ireland and the US, which has actually done a lot of planning work. In most cases, they have focused on what they considered to be their most sensitive water supplies or resource. In some situations it's a surface water source, but in most situations it is groundwater.

In the US, the approach has been fairly similar to the approach we've been discussing with our technical experts, focusing on the municipal wellheads first, which is the larger population centres, followed by those recharge areas, which are the sources of the actual water quantity, making sure those are protected, and following along with that on a broader structure. So the integrated or phased approach is fairly common in other jurisdictions, but as Joan has noted, it tends to start with whichever type of water is important to that particular jurisdiction.

In our development of source protection, we have had a number of committees provide recommendations to the minister. Their recommendation has been that the municipal groundwater supplies, which have received a number of years of science and investigation, should be the priority watershed or water source that we protect with the initial planning phase.

**Ms. Churley:** Just coming back briefly to aggregates and cautionary source protection, one of the things I refer to frequently is the watershed-based source protection implementation committee report to the Minister of the Environment. One of the things we're talking about—just in terms of the legislation, to back up my point on this, the committee says, "It is important that all provincial and municipal decisions affecting drinking water be consistent with approved source protection plans. In addition, source protection plans must prevail if conflicts with other instruments occur. The primacy clause would help ensure effective implementation of source protection plans by providing the legal basis for decision-making in the event of such conflicts."

My question around that would be coming back to what I asked earlier: Would there be this kind of overriding clause in a source protection act that would take precedence over any other act, as recommended?

**Ms. Andrew:** Because the act hasn't been tabled, it is hard to say exactly what will be in the act. I could refer you, though, to the growth act that has been tabled, where it actually says that where issues related to human health

and the environment are concerned, the growth act would bow to future source protection legislation, which I think does indicate that—environmental legislation. Sorry. It does indicate that there has been integrated policy work across government in that the intention, as that act has been tabled, is to refer to allow primacy where it's needed in source protection. It's only by inference in the growth act, but it does—

**Ms. Churley:** Exactly. That's what we need to be looking out for, because in terms of source protection, if it's not in there, then a lot of the really good work you're doing will not happen because of some of the other acts and some of the other pressures on other ministries.

I wanted to just come back to where we are in terms of funding. I know you do your best with the kind of resources you have, and we discussed that in previous committees on other environmental issues. The auditor, as you know, assesses if the government has adequate procedures and policies to ensure that we have a safe drinking water supply. But of course we all know that the effectiveness of anything that appears on paper relies at least in part on the resources available to implement it. The backdrop is that I know that the MOE did receive an injection of money in last year's budget for source water protection, and we've alluded to some of that: money for research and program development, some for capital, and water programs have been the recipients of some restored funding since Walkerton.

We touched on this earlier before you came in, and after with some of the other questions. The auditor just keeps on finding evidence of a lack of enforcement. You could say, with all due respect to the Chair here, that some of it is the legacy of the huge cuts that happened under the previous government, which have not been fully restored; in fact, a very small portion of it. So what we found is that there are examples of insufficient monitoring of water-taking permits, active and expired, and no follow-up with permit holders to submit hydrological reports identifying the potential impact of the proposed water-taking on the groundwater supplies and systems.

Here's more of the backdrop: We're also receiving very strong messages that the MOE will not be a candidate for more funds in upcoming budgets, and I'm sure that's very disappointing to you. Given everything that's on your plate with all these new pieces of legislation, and speaking specifically today about all the work you have to do around protecting our water, I believe that this fiscal backdrop that I'm painting here really does put into serious question the fate of the upcoming source water protection plans.

For instance, for the plans to work, there needs to be funds for all parts, including capital upgrades of municipal waterworks. That's just one other little piece we haven't talked about here today. The municipalities have made it clear that with their downloading and having to pay for a lot more things, they don't have the capital money to do it.

So here's an idea that came forward from the Liberal government—and I put forward a private member's bill,

and environmentalists have been calling for it—and that was the government said that they would no longer be giving away Ontario's water for free and that they were going to start charging for water-taking. I have a motion on the order paper that calls for this as well, and environmental groups have been calling for it, because they understand and are quite worried that although things look good on paper, if the money is not there, it's not going to happen.

When the amended water-taking regulation was announced this fall, that component was missing after the government announcement. The spokesperson for the ministry, when we asked, said that they were still consulting on the water-taking fees. So my question is actually very simple, after all that: What is the status of the water-taking fees regime at this point?

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**Ms. West:** I would like to just briefly respond to some of the comments, or the context that you have presented.

**Ms. Churley:** But I have a lot more questions.

**Ms. West:** OK, I'll be brief. In terms of the funding for the ministry, I think you yourself have acknowledged that there has been a new injection of funding, particularly in the water programs. We do have the information. I know that the last time we were together, we talked a little bit about the budget and the change in the budget for the ministry over the past few years.

**Ms. Churley:** It was a heroic effort.

**Ms. West:** We can go back to that if you want, but we don't have to go there right now.

**Ms. Churley:** Right.

**Ms. West:** Certainly with respect to the resources and some of the issues that you raised in terms of compliance, we are, as well as making good use of the new resources, taking a risk-based approach to our enforcement and compliance. If you want, we can talk a bit about that in a minute as well, as we get to your specific question.

In terms of the cost of water, I think there has been an acknowledgement from a number of sources that as individuals receive the water municipally, in fact what you're receiving doesn't reflect anywhere close to the real cost of providing that water. That's another consideration in terms of municipal water rates, going forward.

With respect to charging for water, in and of itself, I'm going to ask Joan to speak to that because I think, first of all, we want to understand the context in which that water charging proposal was first brought forward, and she can reference where we are with respect to it.

**Ms. Andrew:** On charging for water, we have been doing some policy work. The further we got into it, the more complex it became, if I can say it this way. There are NAFTA rules that say, for instance, if you charge someone who is on a stand-alone system, but they're a competitor with someone who is on a municipal system, you have to actually apply the same charges to people on municipal systems—

**Ms. Churley:** If I can interrupt, I looked into that too when I did my resolution on this. If it's administrative fees, which can be done, then NAFTA—

**Ms. Andrew:** On administrative fees—

**Ms. Churley:** So you can do it differently.

**Ms. Andrew:** We have applied administrative fees to permits to take water. But because of Eurig decisions, we can only charge administrative fees to the level that it costs the ministry to administer. We're limited by what we can charge on administrative fees by a Eurig decision, so the administrative fees reflect the cost it takes the ministry to process the application. If you're talking about the issue of charging for water, then it has to go beyond what it costs the ministry. It goes beyond administrative fees.

**Ms. Churley:** I've seen real creative ways to up administrative fees in other areas, above and beyond the actual cost.

**Ms. Andrew:** By the time we got legal advice on constitutional issues, NAFTA issues and international trade issues, we were somewhat constrained in a creative approach.

**Ms. Churley:** Are you saying then that this concept and the announcement that was made is dead because of NAFTA concerns?

**Ms. Andrew:** No, I'm not saying that it's dead.

**Ms. Churley:** So you're still looking at ways—

**Ms. Andrew:** We're still looking at ways. I'm just saying it became a more complicated issue than we had initially thought. No, it's not dead.

So we are now charging administrative fees for the processing of permits to take water. There are two administrative fees: one for simple permits, as I call them, and one for more complex permits. The watering of livestock is exempt from the need for permits to take water, but all other agricultural uses are exempt from the permit—

**Ms. Churley:** When did those come into effect?

**Ms. Andrew:** April 1. Michael can give you the details.

**Ms. Churley:** Can I get them later?

**Ms. Andrew:** I just wanted to say one thing.

**Ms. Churley:** Sure.

**Ms. Andrew:** We also instituted a new service standard along with the fees so that we now turn around the vast majority of our permit applications in 90 days.

**Ms. Churley:** OK. I'm sorry. I know I'm trying to rush you, but we have such limited time. Do you want to just very briefly—

**Mr. Williams:** Sure. There are three categories of fees. A low risk of causing any kind of environmental impact fee is \$750. That's a category 1. Category 2: again, \$750. This is where there is a slightly higher degree of environmental impact or interference. For category 3, the final category, the fee is \$3,000. That's where there's higher risk of causing significant adverse environmental impacts or interference and where we need to do extensively detailed scientific reviews. I have examples of those categories. I can provide them later, if you'd like.

**Ms. Churley:** If you could provide them, actually; perhaps the entire committee would like to see those.

**The Chair:** If you could provide those to the committee.

**Ms. Churley:** Can we get into the planning for groundwater management? Again, this came up earlier, but I had a couple of more questions to put clarification around that. The auditor says, as you know, it's going to take years to implement source water protection plans across the province, largely because they're presently being undertaken on a voluntary basis by municipalities and conservation authorities, with, as we've acknowledged, some funding for early water management studies: \$19.3 million, I think, was provided last fall.

Assuming government introduces and passes the source water protection legislation in the near future, do you have any idea, based on what we know now, how long it'll take to have the outstanding source water protection plans completed under the existing circumstances?

**Ms. Andrew:** It still will vary across the province, community by community. We have done, if I can say this, quite a lot of the technical—my sense is always telling me we haven't done enough. Doing the groundwater studies and the wellhead protection studies, we've focused a lot on what's under the ground. What we haven't done yet on source protection is some of what I would call the land use planning: What are the surface uses in and around municipal wellheads and vulnerable areas?

So there will have to be some kind of community-based process for communities to come together and to assess their water and the land uses and to make those plans. It will vary, depending on how far along some communities are, but we would guess somewhere between 18 months to three years, I think, in terms of different communities being at different stages.

**Ms. Churley:** Do you have any idea of how much more money needs to go to the conservation authorities to get all this work done, and what is the estimated cost of development and implementation?

**Ms. Andrew:** I don't think you can estimate the cost of implementation until the plans are developed, because the plans are all about determining risk, and so the implementation costs will depend on that kind of risk assessment. We are looking at what it would take to do the assessment planning across conservation authorities and having discussions with the Ministry of Natural Resources on that. I think we're confident that between the two ministries' resources over the next couple of years, we can manage the assessment and planning process.

**Ms. Churley:** I wanted to get into a little bit around nutrient management plans.

**The Chair:** I'm going to rotate it before you get there, OK?

**Ms. Churley:** Sure, that's fine. Go ahead.

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**The Chair:** Marilyn said, in deference to the Chairman, with regard to ground source—my recollection of history is a little bit different, in that—

**Ms. Churley:** We were both there.

**The Chair:** —when I became the Minister of the Environment in 1996-97, in fact, very little attention had been paid by the previous administrations over the previous 15 years with regard to groundwater and that tremendous resource. It was my recollection of history that we started to deal with well drillers, to collect information that was disparate at that point in time. We also started a lot of groundwater studies. I remember the one in the far east being the first one, Dundas-Glengarry and Prescott-Russell. What I think happened in history was that none of us paid adequate attention to this particular resource, but that it started to progress at that point in time. At any rate, that's my recollection of history, which is somewhat different than—

**Ms. Churley:** For the record, huh, Norm?

**The Chair:** That's right.

**Mr. Jeff Leal (Peterborough):** I want to come back to the increased roles that conservation authorities are going to have with regard to source water protection. My background is in municipal politics, and during the 1990s, of course, there were reduced resources from the Ministry of Natural Resources to fund conservation authorities. Municipalities were asked to increase their levies to support conservation authorities and in many cases there was a philosophical shift in conservation authorities where they abandoned their planning functions and went to functions that would produce revenue, dealing with developers in order to keep conservation authorities going. In my riding of Peterborough, the Otonabee Region Conservation Authority was in reasonable shape, because the city of Peterborough could sustain levies to keep it going. But in the eastern part of Peterborough riding, we have the Crowe Valley Conservation Authority in communities that have low assessment bases. Right now, we've asked the general manager of that authority—he's like a jack of all trades. He fixes dams, he picks up garbage in parks, he does this, he does that, because of the reduced capacity.

My question is, in dealing with this issue—and I think you touched upon eight conservation authorities that may have capacity, within 36 in Ontario—would we have to move, in your discussions with MNR, to having larger conservation authorities in Ontario, to having larger assessment bases to sustain the kind of planning functions that are going to be inherently necessary in order to do this very important work in source water protection? It won't be a cheap thing to do. This will be a pretty expensive task in the province of Ontario, because I know in the city of Peterborough the dollars we've put up to do this kind of activity. I'd like to hear a comment about that and your work with the MNR on this issue.

**Ms. West:** Let me just make some general comments, and then I'll invite Joan or Catherine Brown to speak further about the conservation authorities. We recognize, as has already been said, there's a variety of capacity in conservation authorities to respond to this or to do other work. Certainly this government, with the Ministry of Natural Resources, has recognized the need for resources

to be provided to conservation authorities to help them build the appropriate capacity to respond—and some of that has already been done—and also looking at a way to consolidate conservation authorities to support better capacity for source water protection planning and implementation. So we recognize they're a very important delivery partner, and we have to make sure that they are enabled to do that delivery.

**Ms. Andrew:** Maybe I'll start and Catherine can give you the details. We did have very early negotiations with Conservation Ontario, which is the province-wide organization that supports conservation authorities, at the very beginning, to make it clear that capacity-building was something we took very seriously and that we might need to work with organizations bigger than one individual conservation authority. They worked with us jointly to create the watershed-based planning areas and to look at the partnerships, and they worked and negotiated amongst their conservation authority members on the partnerships that would be needed and the agreements on which the conservation authority would take the lead in a given area. That was a very formalized agreement that they undertook amongst the conservation authorities, and it was a requirement of us moving forward. Last December, the two ministries—the Minister of Natural Resources and the Minister of the Environment—announced funding for those conservation authorities to begin the capacity-building and technical needs, moving forward on source protection. That is a substantial increase in the provincial funding for conservation authorities, but it is focused on watershed-based source protection. There is a specific memorandum of understanding between the Ministry of Natural Resources and Conservation Ontario to govern the use of that money so that it is focused on a particular need.

If you want more details, Catherine can provide them.

**Ms. Catherine Brown:** I'm Catherine Brown, the director of strategic policy at the Ministry of the Environment. Some of the funds that were provided—as you recall, Joan alluded earlier to the white paper. In the white paper that the government issued about this time last year, there was a delineation of where the conservation authorities currently exist; where there are some areas in southern Ontario that require additional coverage; and where there might be a lead conservation authority that had a strong sort of capacity that could assist and help build capacity in those other areas. The example of the Crowe conservation authority—it is being supported by the Lower Trent and so it is a stronger conservation authority. They'll work together across their separate watersheds but collectively in that area to build capacity for that area.

**Mr. Leal:** Thanks very much.

**Ms. Laurel C. Broten (Etobicoke–Lakeshore):** I have a couple of questions that I wanted to canvass with you. The first is with respect to whether you could give us a little more detail as to the efforts made to respond to the auditor's concerns about investigation and prosecution. I understand that quite a lot of examination of this

issue was undertaken prior to January of this year. I'm wondering if you can let us know where we got to by January of this year and where we're going to be going in the time to come.

**Ms. West:** I invite Michael Williams to respond to that.

**Mr. Williams:** One of the many benefits that we find, when the Auditor General's staff come in to sit with us and take a look at some of the things, is they're very good at pointing out areas where we could perhaps improve. This was no exception with respect to the investigations and enforcement branch. In fact, the recommendations that were made we welcomed, and we've done a number of things to try to address them, because we knew we had some problems. I want to tell you what they are.

There were a number of concerns on the matter of speeding up investigations and making sure that the statute of limitations did not allow our investigations to expire, and therefore we couldn't bring things forward to the courts. We've implemented a new process. We have an advance warning system. There are several triggers in the system several months ahead of approaching that two-year window to make sure that we know where we're at with respect to the investigation. We have a team, actually, of investigators and managers that takes a look at that. If we need to redeploy resources to make sure a significant file, for example, does not run up against the statute of limitations time frame, we do that. We just implemented that earlier this year.

Another concern raised for us was whether it is possible to streamline some of the time that we're taking on those. The director of the investigations and enforcement branch has recently instituted a case management workload system, very similar to what police agencies employ across the province, that starts to assign priority rankings to some of the matters that come in that are referred to them from the field. We do it on a risk basis. We look at the things that are the most significant potential violations, where we really think there'd be a huge benefit to move through that. So it's on a case management system to move forward also.

In terms of the third and, I think, the final area that came forth, there was an expression of interest from the Auditor General's staff that we be careful with the amount and volume of referrals that are coming into the branch. If I were to describe to you the way things work in the field, we have our field environmental officers who encounter a number of violations, and they can be relatively minor to fairly major ones.

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The field staff has an opportunity to do what we call "refer" a matter to the investigations and enforcement branch. What we've done in the last few months is undertake a lot of training for the field staff. We're also working with them on the most important ones that need to go into the branch, so the branch can effectively manage its workload, and at what point in time it is important to send a referral in. Do you do it, for example,

the minute you're out there and discover something? Or do you wait until, if orders have been issued by provincial officers or directors, you check compliance with the orders before you make a referral? It's that sort of three-pronged approach that we've taken. All of them have been implemented to date, and we thank the recommendations because they've been helpful in that regard.

**Ms. Broten:** Just as a follow-up to that, certainly hand in hand with putting in place rules that people can abide by, enforcing them and ensuring compliance is the issue of making sure that the government and the Ministry of the Environment accomplish the goals that have been set out. I know the auditor also had some concerns with respect to whether the measurement and reporting criteria that had been put in place were effective. As we move forward on a lot of initiatives that are taking place right now, how are we going to benchmark what is happening against where we hoped to be by a certain period of time, and where we're going in the future?

**Mr. Williams:** As you quite correctly point out, one of the things that we wrestle with as a result of our enforcement and compliance effort is not just to strictly count numbers but to look at changing the world out there and making a difference in the environment.

I can tell you that we have progressed in certain areas with respect to performance measures. One of the areas that we're targeting is our nutrient management program. We're actually designing our inspection effort to be a report card for the farms that we visit. It's a different idea, a different approach that we've taken. It's going to benchmark our findings on a county or a regional basis, and it's also going to have some provincial numbers on it, so that as we move to implement inspections on farms across the province, the farmer himself or herself will be able to take a look and say, "This is where I rate against my commodity producers in the same arena that I operate in, this is how I stand up against a regional or county basis, and this is where we're at provincially." Over time, we hope to keep raising the bar. It's a new way of measurement, and it's tied in with our roles and responsibilities under nutrient management. That's one of the approaches we're taking to try and get better performance measures instead of just counting numbers.

**Ms. Broten:** Will that give the ministry something to measure the entirety of, for example, the groundwater program and what the success level of that program is going forward?

**Ms. West:** I think what Michael has described is the particular approach to measuring in terms of dealing with the regulated community on nutrient measurement. We do have, broadly, the ministry's performance measures. In 2003-04 we had 14 measures across the ministry, and four of those measures were associated with water—three for drinking water quality and one for surface water quality—so that we are, going forward in 2005-06, looking at external and internal reporting, but we're looking at five measures specifically targeted to water. We think that this is an important approach to identify, as

you've said, what the results and broad objectives are and to be able to track the effectiveness of our programs and approach against those measures.

**The Chair:** Our researcher's report pointed to the recommendation of the auditor on page 169: "Ministry should identify desired outcomes for its groundwater program and develop performance measures that would enable it to assess the extent to which program outcomes are being met and be more effective in ensuring the restoration, protection and sustainability of groundwater resources."

As I understood it, the ministry had made a commitment that by March 31 of this year you would have these particular measures in place. Is your previous answer an answer to that or would you like to expand on that?

**Ms. West:** I was referencing just that, the ministry's performance measures. But I'm wondering, Allan, do you have that specific information?

**Mr. Gunn:** The work that's been going on in performance measures is also aligned to our budget or results targeting the results of the ministry.

Particularly specific to the groundwater, that work has not been completed yet. There is still interjurisdictional research going on to make sure that we align our practices and measures with issues that are going on in the other jurisdictions. That should be coming forth down the road, but it has not been completed yet, as had been anticipated.

**The Chair:** How far is "down the road"?

**Mr. Gunn:** It's linked to the policy development. I don't have a specific date that I could be tied to.

**Ms. West:** Maybe what we can do is go back and see where that stands and then report back to committee, both with respect to the current status and with respect to when we think that—

**The Chair:** I think members of the committee recognize that this is not an easy task. But we would like to have some kind of indication of the progress and the time frame that we could look at.

**Mr. Gunn:** We could do that.

**Ms. Churley:** I just wanted to continue on nutrient management for a while, but just to the question I asked before—it's more of a political question so I'd rather be asking the minister and, I guess, the parliamentary assistant, and that's not happening in this forum.

I just want to say, following up on Mr. Leal's question about the conservation authorities—they were cut, I think, by about 70% previously; a huge amount—and the questions I asked around the watershed-based source protection implementation committee, it was quite clear that it was the provincial government's responsibility to fund the development and implementation of the source water protection plan.

I simply want to say that all these things look really great on paper, but these are huge, enormous undertakings, which are going to mean resources for them to happen. I understand that you can't answer some of those questions today about the cost of implementation, and then there are the costs of development and all of those

things. I guess I'll take those questions more to the minister at this point. But I just want to put on the record, Auditor, that I have a real concern about your comments on this and a real concern about the resources, or the lack thereof, in making sure that these things get done. I'm not going to ask you any more questions about the resources, but I think you hear what I'm saying.

**Nutrient management plans:** Chemical pesticides used in agriculture and in commercial and non-commercial enterprises pose a serious threat to water. As you know, they can find their way from the soil into groundwater systems. Pesticide runoff ranks as one of the most prominent threats to the integrity of the Great Lakes. I know you'll say, "We're dealing with groundwater here, not surface water," but, as you know, in the hydrological cycle surface water makes its way back into the groundwater supply, and this illustrates how pesticides are a prevalent risk to water quality on many fronts: water and ground.

We haven't heard anything about a strategy to lessen the use of pesticides via a risk-based approach that gives preference, first, to biopesticides. Are there any plans, in other words, on this issue, the limiting of pesticides?

**Ms. Andrew:** Part of the risk assessment that would take place for source protection would address pesticide storage and use, so it does that way. But Carl Griffith actually has responsibility for pesticides broadly.

**Ms. Churley:** It's not about the storage so much as—well, you heard my question.

**Mr. Griffith:** The federal government has certain responsibilities for the classification of pesticides, based on the health and safety criteria that they use. We have certain levels of responsibility for the storage and application of pesticides. There are also municipalities that are looking into what powers and controls they have within their statutory requirements. So I'm not sure that I have an answer for you as to whether there is a wholesale strategy. There are different levels of responsibility and actions being taken at all three levels.

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**Ms. Churley:** So in terms of the Nutrient Management Act, within the context of that, there is nothing more specifically happening than is already in place on the usage of pesticides?

**Ms. Andrew:** I don't believe pesticides are covered under the Nutrient Management Act.

**Dr. P.K. Misra:** My name is P.K. Misra. I'm the director of the waste management policy branch.

In the Nutrient Management Act the focus is on managing the nutrients, so there are no pesticide requirements as such in the plans or the strategies that the farmers are supposed to produce. Some of the farmers do have voluntary environmental management plans and they provide information on the management of pesticides as part of those plans.

**Ms. Churley:** As I understand it, the plans are to be phased in, starting with the large livestock operators, to have plans in place by July of this year, right? The large ones?

**Ms. Andrew:** Yes. In fact, the first one was the new and expanding farms, and they were regulated.

**Dr. Misra:** The new and expanding farms, expanding into the large category, have been regulated since September 30, 2003. Those strategies are expected by July 1, 2005, and the plans are expected by December 31, 2005.

**Ms. Churley:** Where I'm going with this is, given the auditor's concern about implementation being delayed even further—I just mentioned the slow rate at which plans are being submitted for government review and approval. What I want to ask you—and you may find this too political to answer, but it's an important question. The government, in the meantime, has been trying to overturn municipal bylaws. We got into this a little earlier, before you came in, about municipal roles and bylaws and all of these things. There have been bylaws brought in by some communities to try to protect local water supplies from potential contamination by large livestock operations. This past summer, the government went to the OMB to appeal a bylaw passed by Huron-Kinloss. This bylaw required that livestock operations be kept at a certain distance from the shoreline, but the government, under OMAF, went to the OMB to try to overturn that decision.

You're the Ministry of the Environment, I know, but this comes back to my earlier question about the supremacy of some laws over others. While we're in the process—and it's going to take years for some of this to come together—why would the government, on any level, be trying to overturn local decision-making that's there to protect the drinking water?

**Ms. West:** It is difficult to respond to that for a couple of reasons, one of which is what you referred to, that it's not the responsibility of this ministry, as you noted, but the Ministry of Agriculture and Food.

Maybe it would be appropriate if I could invite Michael Williams to clarify the difference in responsibility under the Nutrient Management Act between the Ministry of Agriculture and Food and the Ministry of the Environment, and also speak to what we're doing nonetheless in terms of trying to deal with risk, working with the farming community while we're in the evolving stages of the Nutrient Management Act and the requirements and the regulations of that act.

**Mr. Williams:** There is a difference between the two ministries.

**Ms. Churley:** Yes, I know.

**Mr. Williams:** OMAF's responsibilities are to review, receive and approve the plans and the strategies. They are to conduct education and outreach in the agricultural community, which we also partner with them on. We share the policy development roles and responsibilities, but basically our ministry is responsible for compliance with the legislation.

I want to point out that regardless of what particular state a number of applications are—and I can speak to the number of applications, because we do have recent information on that; OMAF has provided that to us. I just

in Grey county, trying to look at regional capacity as opposed to each municipality acting on their own. We've been working with municipal affairs and housing to administer the COMRIF program, the Canada-Ontario municipal rural infrastructure I believe it is, and looking at those kinds of things to assist rural municipalities with necessary upgrades to their sewage treatment plants.

**The Chair:** This has a huge impact. I don't know how much notice people have had about this. I don't know about the area you represent, Bill, but in my area it hasn't hit yet. In other words, the rural municipalities don't understand that you can't—can they give building permits?

**Ms. Andrew:** I'm sorry, I don't have the details of the Ministry of Municipal Affairs and Housing. We can go and get the exact details and provide them to the committee later.

**Mr. Mauro:** I don't mind just following up on it on my own. I'm not sure that your representation is accurate; in fact, I'm hoping it's not, but it sounds incredibly—well, we'll find out about that one on our own.

The other question I have is a bit of a tough one. I'm not even really sure how to frame it. Where I come from—northwestern Ontario; Thunder Bay, specifically—almost everything is an aquifer, almost everything is a river or a stream or a lake. When we begin to implement these policies, which I think we all agree are necessary to some degree, is there any thought or consideration given to the restrictions and how restrictive it can be for economic development in northern Ontario or any area besides northern Ontario that has sort of missed the economic boom that has occurred in most of the province over the last 10 or 15 years?

I have personal experiences now about economic development opportunities that can't move forward under processes we have already. These, while necessary, may make that even more difficult. I'm wondering if we're attempting to somehow factor in—as I say, when almost 100% of your geography is an aquifer—a river, a stream or a significant wetland or endangered species habitat or something—do we factor that in and just at some point say, "That's going to be a provincial park, 100% of it," or are we somehow going to try to realize that there is a bit of a balance that has to try to be achieved?

**Ms. Andrew:** Maybe I could answer that at two levels. One is that we are, as I think I said earlier, trying to focus on a phased approach, so we'd start with municipal wellhead areas. We are going to try to focus in on municipal wellhead areas and looking at a 100-metre radius around them—that's a football field around a wellhead area, which is significantly smaller—but we're also looking at a particular approach in northern Ontario, partly because there are fewer conservation authorities,

but partly to look at a more municipally focused approach to focus very specifically on the needs around municipal wellheads and municipal intakes.

Some of the interjurisdictional research and also the research of Ontario communities that have already undertaken source protection planning has actually had a very limited impact on economic development in those communities.

I just wanted to answer in both ways, which is, we are looking at a special approach for northern Ontario, but also the land use restrictions are much less significant than most people anticipate.

**The Chair:** I think it would be helpful for all members of the committee—Mr. Mauro's question with regard to building permits and subdivisions—if you could check that out and respond to us within a week, please.

**Ms. Andrew:** Within a week?

**The Chair:** Yes. I think it's important to know whether that information was accurate.

**Mr. Mauro:** Are you clear on what the question is? Can I ask you that? Within the municipal boundaries I can understand the policy to some degree if a municipality—in my particular example, Thunder Bay—has lots of rural land that would not be on the sewage system where they would have to get that approval, so they're basically approving it for their own system. But I'm talking about neighbouring municipalities that are small, rural, which do not have sewage treatment facilities, which are entirely on septic systems—they do not have treatment plants. Are you suggesting to me that the PPS is saying that in those types of municipalities they would have to have approval from neighbouring municipalities that do have sewage treatment plants to accept the septage from those approved subdivisions before they could approve them? That's my question.

**Ms. Andrew:** I understand your question. I do not know the answer.

**Mr. Mauro:** I just wanted to make sure that you're not back next week again with—

**The Chair:** I guess my question was further in terms of a severed lot or a subdivision lot: Can they issue a building permit?

OK. Thank you very much for your help. I believe that you're going to be responding to us with regard to a couple of matters.

**Ms. West:** We will, and we have information for Ms. Churley that she asked for before your break.

**The Chair:** Thank you very much. Committee members, we will be meeting in about five minutes in closed session.

*The committee continued in closed session at 1222.*







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Research and Information Services



# Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

# Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

## Official Report of Debates (Hansard)

Thursday 28 April 2005

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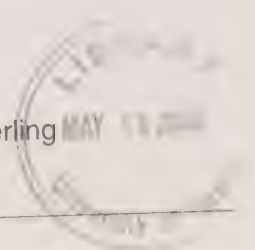
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Thursday 28 April 2005

Jeudi 28 avril 2005

*The committee met at 0938 in committee room 1, following a closed session.*

2004 ANNUAL REPORT,  
PROVINCIAL AUDITORMINISTRY OF FINANCE  
MINISTRY OF CULTURE

Consideration of section 3.13, media tax credits.

**The Vice-Chair (Mrs. Julia Munro):** Good morning and welcome, everyone, to the standing committee on public accounts. We're here this morning to discuss section 3.13 of the report, media tax credits. Welcome to those of you who have come to provide us with some insight. I'd ask you to introduce yourselves for the purpose of Hansard. You may begin, and we'll organize questions after your presentation.

**Mr. Colin Andersen:** Good morning, everybody. Thank you very much for having us here today. My name is Colin Andersen. I'm the Deputy Minister of Finance.

I'll introduce my colleagues who are going to help with the presentation today. On my right is Terry Smith, who's the Deputy Minister of Culture. We also have Michel Frappier, who's the CEO of the Ontario Media Development Corp., an agency of the Ministry of Culture. Marjorie Mercer, an assistant deputy minister of Culture, is here. On my left is Dario Savio, director of the collections and compliance branch, tax revenue division, of the Ministry of Finance. Ann Langleben will also come to the table at the appropriate time; she's the director of the corporate and commodity taxation branch with the office of the budget and taxation of the Ministry of Finance.

We also have other staff here who might assist us in answering any questions you may have, and I will ask that they introduce themselves if they come up to the table.

Once again, thank you for the opportunity to address the committee on the issues that were raised in the auditor's 2004 report on the Ontario media tax credits. Those tax credits help to attract jobs and investment and maintain a strong and growing entertainment sector in Ontario. As you know, this is a highly competitive environment. Many other jurisdictions have recognized what Ontario has: that the cultural sector does more than simply provide entertainment. It also creates jobs, attracts

investment and promotes tourism. Like Ontario, these other jurisdictions have invested in this sector.

We welcome the auditor's value-for-money review of the tax credits, as it supports the government's commitment to fiscal transparency and accountability, as well as its commitment to the province's cultural industries.

We're proposing to use our time this morning to take you through a brief overview of the tax credits, a little bit of background on the sector itself, what the administrative roles and responsibilities are of the two ministries and at the OMDC, and then a summary of our response to the auditor's recommendations.

You've all got copies of the slides in front of you. We're going to trade off a little bit with regard to speaking to each of the recommendations as they come forward. To start, I'd like to turn it over to Terry Smith to say a few things.

**Ms. Terry Smith:** I want to direct you to the slides, and I'll just go through the first few. The tax credit program has been in place since 1996, and it supports publishing, film, television, digital media and computer animation. The program really helps support content development—which is very essential to Ontario, to have our own content—and it helps the industries grow as industries, so twofold reasons, and it helps not only the industries but the authors, the filmmakers and the actual professionals who work in the area.

The tax credits have helped to make Ontario the leading jurisdiction in media development in Canada, and we have been proud of that role. Other jurisdictions have copied our programs and tax credits, and as you know, we've had a little bit of competition from them. But in Ontario it's a program that provides \$7 billion in revenues and stimulates over 45,000 direct jobs and probably three times that in indirect jobs in the industries.

Stakeholders like the program because it really helps them grow and develop their products and their ability to tell our stories to other areas, so we have our own unique Canadian films, records and books.

In December, as you may know, the government made some changes to the film tax credit because we were lagging behind other jurisdictions and actually losing many productions to foreign jurisdictions and to other jurisdictions in Canada. The film and television tax credit was increased from 20% to 30% and the production services tax credit went from 11% to 18%. Almost immediately, as soon as that was announced, we had calls

to say productions were coming back to Ontario. In April, we had 11 significant new productions, and at least five more are coming. Overall, in the spring, Ontario had 36 productions here, which was a 56% increase over the same period in 2002 and 2003. In discussing this with the filmmakers and producers of these products, they have indicated to us that had it not been for the changes to the tax credit, we would not have those productions here today.

I just want to outline very quickly for you our different roles. The tax credits are administered under section 43 of the Corporations Tax Act. The Ontario Media Development Corp., the Ministry of Culture and the Ministry of Finance share this responsibility. The Ontario Media Development Corp. does the certification on the eligibility of the applicants and their activities, they provide us with information and statistics, and they monitor the activity within the industry.

Our ministry provides policy advice to the Ministry of Finance on the status of the cultural industries and the impact of the tax credits. Of course, the tax revenue division of the Ministry of Finance processes and does the audits on the returns when the credits have been claimed, to verify the evidence.

I'm going to turn the presentation over to Michel Frappier, the chief executive officer of the Ontario Media Development Corp.

**Mr. Michel Frappier:** Good morning. I will touch first on the overall audit findings:

"A number of constructive steps have been taken in recent years to mitigate the potential risk of tax credits being incorrectly determined as a result of fraud or abuse."

"OMDC had put in place reasonable procedures for assessing eligibility of tax credit applications."

However, "eligibility applications were not being processed in a timely manner, which resulted in delays in the issuing of certificates of eligibility and a significant backlog..."

The delays at OMDC in determining eligibility were "compounded by delays at the Ministry of Finance in processing tax credit claims."

Audit risk assessment was not documented in the Ministry of Finance audit files.

While the three parties had developed high-level performance measures, "the establishment of more specific indicators of economic and cultural performance would better measure the effectiveness of ... the credits in achieving their objectives."

I will now deal with the recommendations, as far as where we come from.

Recommendation 1: The value-for-money audit recommended that:

"To better manage the risk of non-compliance and to improve the turnaround time for applications, the ... OMDC should:

"—consider each application's complexity and the risk of non-compliance when assigning assessment staff to review applications; and

"—expedite the claim review and approval process without sacrificing the key verification and approval processes."

OMDC minimizes the risk of non-compliance by making certain that all its analysts are capable of assessing complex files. Through performance planning and regular monitoring, analysts maintain knowledge of current industry practices and trends.

A previous system which streamed more complex files prior to review was not effective, as it proved impossible to pre-identify complexities. OMDC has restructured its file assignment system to better manage risk. For example, we found out that budget was not a reliable indicator of complexity.

Since the audit, the OMDC has addressed the recommendations in the following ways:

OMDC is formalizing a risk assessment process where tax credit analysts identify high-risk applications at the beginning of the review. Thus far, the files identified by analysts as high-risk will undergo a more rigorous secondary review by tax credit team leaders.

A skills and knowledge index has been created and implemented to ensure that all business officers reviewing applications have the requisite skills to assess the most complex files and to formalize the training process for business officers. Officers use the index as a tool to develop learning plans to continually upgrade their knowledge.

Processing turnaround has been reduced significantly since the introduction of the tax credits, and the audit acknowledged that OMDC was making a concerted effort to reduce its backlog. Even though the number of applications has increased from the 2000 fiscal year to 2003, cycle times have been reduced from 27 weeks to 19 weeks. Since the audit, cycle time has been further reduced. At the end of March, turnaround time for the fiscal year was 14.3 weeks.

OMDC has not sacrificed due diligence in order to streamline processing. We will continue to reduce our turnaround through internal streamlining, in co-operation with the Ministry of Finance and federal agencies.

**Mr. Dario Savio:** I'll be dealing with recommendation 2, which is that "the Ministry of Finance should ensure that eligible claims are processed in a more timely manner."

What is being done so far: Recognizing the need for speeding up claims, the ministry has put in place a process of making sure that up to 85% of the film tax credits are paid within a six-week time frame. Currently, 75% of the partial refunds are paid within the six-week target period and 87% within eight weeks. Some of the delay is in getting information from the companies filing the claim to make sure that there are justifiable expenses included in there, and also in audits that need to be done before the payment of the claims.

The Ministry of Finance and OMDC continue to explore means of increasing the amount of funds paid in a timely fashion and trying to cut down on the amount of time it actually takes.

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Recommendation 3 is that the ministry should ensure that “claims are selected for audit based on assessed documented risk” as well as “stated ministry policy.” The second part of that is that the results of the audit should identify possible trends.

What is being done: The ministry has established risk criteria for review of all claims that are received. The ministry has also put in process risk criteria for each account coming in, to determine those that would require desk review and those that would require field review.

Every file that is reviewed has a risk component attached to it. For each file, at the conclusion of its review there is a summary sheet that is included in the file for subsequent follow-up. The ministry is in the process of identifying trends in order to feed back into the audit process and communication to OMDC in order to expedite the process even more.

**Ms. Ann Langleben:** My name is Ann Langleben. I’m the director of the corporate commodity tax branch, and I’m here to address recommendation 4.

The recommendation was that in order to ensure that the media tax credits are achieving their objectives, the OMDC, the Ministry of Finance and the Ministry of Culture should work together to develop specific performance standards and targets, and should update the memorandum of understanding to clearly define each party’s responsibilities with respect to performance measurement and reporting, and obtaining the information needed to monitor performance.

The government has begun a process of regularly reviewing all tax expenditures as part of its commitment to increase fiscal responsibility and accountability. The 2004 budget announced that, as the first step of its review of tax expenditures, a number of tax expenditures would be modified or eliminated, and that, in general, any new tax expenditures would be time-limited to ensure that they’re reviewed for their effectiveness. The government also made a commitment to publish annually estimates of the cost of tax expenditures. The Fiscal Transparency and Accountability Act requires the Minister of Finance to release this information with an annual mid-year review of the fiscal plan on or before November 15.

For any tax expenditure in the tax system, there’s difficulty in isolating and measuring its impact. It is part of the broader tax system. What the Ministry of Finance is doing right now is working with OMDC to explore the feasibility of applying specific performance targets and standards to the media tax credits. Possible performance measurements would include tax credit take-up; increases in film and television production activity associated with the credits; and the number of projects that are undertaken or that receive credits—films, books, sound recordings, and the other media credits as well.

The film and television tax credit enhancements that were announced in December were proposed to be time-limited and subject to performance reviews. The Ministry of Finance is currently working with the media development corporation to update the memorandum of

understanding to better clarify responsibilities with respect to performance measures and obtain the information needed to monitor performance.

**The Acting Chair (Mrs. Liz Sandals):** Are there questions from members?

**Mr. David Zimmer (Willowdale):** Just some questions on what I think are perhaps some systemic issues. Throughout the report it’s quite clear that some of the problems seem to flow from the lack of staff, in terms of absolute numbers of staff and perhaps the skill set of staff to quickly and adequately deal with the applications. Can you give me some idea of the volume of applications you have to deal with and the workload that’s involved, in terms of manpower needs and so on?

**Mr. Frappier:** We process roughly 1,000 applications a year. We have 17 people. Some of our people on staff are MBAs, chartered accountants and lawyers. In order to streamline the process, we added a contract person who used to work with us. That has allowed us to reduce our time down to what it is today, at 14.3. It’s our intention, as well as working with the Ministry of Finance, to continue to find ways of streamlining the process so that we can reduce this further.

**Mr. Zimmer:** A component of dealing with that is the IT issues, the technology issues, I expect, in processing and analyzing. Is the IT component of the unit up to the mark?

**Mr. Frappier:** Certainly, we’re building a database which helps us to truly identify it. What you have basically are a lot of recurring clients and, as such, it allows us to speed up the process in some cases. We have looked, and so have the feds, at doing a whole sort of electronic processing, and it’s really too complicated. It would be putting an added burden on the industries, to the point where, in fact, it would make it very unattractive.

**Mr. Zimmer:** So I gather this work, then, can be done without attention to further IT needs?

**Mr. Frappier:** No, we continue to improve. It’s mainly in terms of the database of clients that we keep. We just put in a new database system; in fact, the first sector to have the improvement has been tax credit.

**Mr. Zimmer:** You’re satisfied that the manpower needs and the IT needs going forward are up to the challenge?

**Mr. Frappier:** I believe they are. We constantly work with both Finance and Culture to see ways of making the whole process that much more flexible, without sacrificing the risk element of each of those files.

**Mr. Zimmer:** There seems to be a distinction in the comments that I’ve heard between complex files—those are referred to quite often, so I gather that there are files that aren’t complex. So my question is, are there any of these applications that are not complex?

**Mr. Frappier:** Absolutely. You see, size is not an issue in terms of whether or not it’s a \$100-million picture, which we don’t get every day, or whether it’s a \$5-million picture. Mainly, I would imagine, the smaller to medium-type files do not complete their application in a way that forces us to be that much more vigilant in terms

of assessing the risk in terms of who are the people working on their productions.

**Mr. Zimmer:** What percentage of the 1,000 applications that you might deal with are complex?

**Mr. Frappier:** About 40%.

**Mr. Zimmer:** There was an expression in one of the presentations early on about content development. That's one of the goals. I'm just unclear; what does the idea of content development entail?

**Ms. Terry Smith:** I can speak to that. It's in the development of our sound recording industry, our books, our films. They are stories told, in and around, about Ontario and Canada, and stories told by Canadians. So our music is music that's created by a Canadian, an Ontarian, as opposed to stories and films that are told from other countries and other lands, which often is the case.

If you look at any of the movies that are in movie theatres, a large portion of them—probably 90%—are films from the United States or other jurisdictions. Ontario films are hard to get into the large movie houses, so we are trying to increase the development of Ontario films and increase the marketing of those films, so that we will become more of a leader in that area.

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**Mr. Zimmer:** Two more short questions. That leads to my next question: Is there a difference in how an application is treated between, say, a big American movie that's geared for the American or the international market, and an application that is geared to more, to use your expression, Canadian or Ontario content?

**Mr. Frappier:** No, there are no differences. They're all treated equally. They all go through the same rigour. There are two different tax credits, but the process is exactly the same for both.

**Mr. Zimmer:** Is there any sense—and don't take this question the wrong way—that one process is more or less rigorous?

**Mr. Frappier:** Absolutely not.

**Mr. Zimmer:** So the Canadian-Ontario doesn't get a little bit of a leg up or anything?

**Mr. Frappier:** No, we'd be contravening the law.

**Mr. Zimmer:** All right. I just wanted to ask the question. My last question is about the trick to keeping the credits in place in the international market to attract the real money-makers from the US. Are there any provisions in place to adjust for the shifting Canadian dollar, which is a real challenge? How quickly can you react to currency fluctuations?

**Mr. Frappier:** Well, we can't peg the dollar. That would be really neat, to be able to do that. Basically, a lot of the suppliers—the studio owners as well as some of the unions—have been quite flexible when the dollar began to go well over 80 cents. But I think, at the end of the day, Ontario offers so much—especially now, with the new tax credit—that we're able to continue to attract these productions. We have the infrastructure, the people and the talent that allows us to do that, and it makes Ontario very much a desirable place to come and shoot. So far, since the tax credit was announced, we've seen quite an increase.

**Mr. Andersen:** Maybe I would add just one thing to that, which is that the announcement made back in December about increasing the tax credits still has to be put through legislation this spring.

**Mr. Zimmer:** Movie financiers move quickly—you made the adjustments in the tax credit, and you said the next day they were on the phone—and they can leave just as quickly. Is there any analysis given to having the credit somehow float with the fluctuation in the value of the dollar, so you could adjust it up or down to attract American films?

**Mr. Andersen:** That suggestion has come forward before. It would factor into some of the design of any legislation that would go forward with regards to putting in place the changes that are there now. It's sort of a stay-tuned thing.

**The Vice-Chair:** The auditor has a question, and then we'll come back to it.

**Mr. Jim McCarter:** Just a quick question to follow up on Mr. Zimmer's. I get the feeling that because of the increased tax credit, there could be significantly more applications coming in over the next year. Do you feel that you have the resources to handle a significant number of increased applications? How are you going to manage that, if that's the case?

**Mr. Frappier:** What we're seeing right now is that the level of production is going back to what we call pre-SARS level. Since then, we've added one contract person. I think we're well equipped to handle the increased business.

**The Vice-Chair:** I think Ms. Smith is next.

**Ms. Monique M. Smith (Nipissing):** I will show my bias toward books in my question, just to warn you, Mr. Frappier. The 14.3 weeks of delay for the credits, is that an average for all the types of credits, or is that specifically with respect to film and television?

**Mr. Frappier:** It's an average of all credits, but books is lower.

**Ms. Monique Smith:** Good. When you talk about triaging through for the complex and the simpler applications, is that done by each sector—by each of the six tax credits—or is that done generally, as the flow of all applications comes in?

**Mr. Frappier:** No. What we have at OMDC are specialists. Even though we move people around, we have people who have come, in the case of books, from the publishing industry. We have people attached to publishing, to music or to new media. As such, they develop quite an interest in and knowledge of the industry and are able to react much faster than a generalist would.

**Ms. Monique Smith:** Right. I think you spoke earlier about the fact that some of the applicants become known to the OMDC, because they're there every year. Certainly in the book industry, there's a certain cadre of book publishers in Ontario that doesn't change that much from year to year, as we know only too well. I'm just wondering if that is a factor, that because they're a known quantity, you can move them through a bit quicker.

**Mr. Frappier:** Well, I would imagine that the applications are less complex, because you don't have the huge labour pool that you would have on a film or on a TV production, so I think it's much easier to process.

**Ms. Monique Smith:** What are some of the measures that you're working on with the federal government to streamline the application process for the various sectors?

**Mr. Frappier:** I will have to ask one of my colleagues. I know there are discussions on that.

**Mr. Savio:** We have a working relationship with CRA. On any claims that are through them, we will follow their lead. So there is an ongoing working relationship with CRA and there are a number of efforts to enhance our relationships with CRA.

**Ms. Monique Smith:** Great, because I know it's very important to all the different sectors that we streamline the applications so they're not reinventing the wheel every time they turn around.

I noticed in the OMDC annual report for 2002-03, when I'm looking at the tax credit applications received and certificates issued, that there are numbers of applications listed for all the different sectors. However, there are only dollar values attached to film and television and production services. Is there a reason why there is no dollar value attached to the total value of tax credit requests for books or sound and there is no total production value for books or sound?

**Ms. Gina Vanni:** I'm Gina Vanni, the acting director of the tax credits group. The book and sound recording credits are different in the legislation in that it's not the OMDC's responsibility to estimate the amount of the credit on the certificate. We do ask for information for statistical purposes, so we ask applicants to provide information for books and sound recordings. We're looking at reporting that on a going-forward basis, but the estimates are filed with the Ministry of Finance in those cases. For the other credits, the OMDC's responsibility is to estimate the amount of the credit, and not for book and sound.

**Ms. Monique Smith:** And why is that different? Why is it different for book and sound than it is for film?

**Ms. Vanni:** It's in the legislation that it's our responsibility for the other credits and not for the book and sound credits. Maybe someone from finance can't speak to you about the purpose behind putting that in the legislation for one and not the other.

**Ms. Langleben:** The other media credits are part of the general tax system. As such, they are administered through the Ministry of Finance, and there is no agency like the OMDC to administer them, or in other words, to—

**Ms. Monique Smith:** Sorry. I'm confused. I thought that the OMDC does administer the books and sound tax credits. I'm just trying to figure out why there's a different reporting structure.

**Ms. Langleben:** Why it's not reported?

**Ms. Monique Smith:** Yes.

**Ms. Langleben:** Well, the value of those tax credits will be reported as part of the Ministry of Finance's annual tax expenditure review report.

**Ms. Monique Smith:** OK. And it's just an anomaly of the legislation that requires you to report books and sound and that the OMDC reports film?

**Ms. Langleben:** We will be looking at exchanging information through the MOU, and certainly we can explore ways of streamlining the reporting system in this area.

**Ms. Monique Smith:** Sure. I just think that if the OMDC is going to be reporting on what they're doing, it makes sense to report all the activity, as opposed to just film and television, because historically the OMDC has been seen as favouring film and television—at least, that's what I hear.

To that end, Mr. Frappier, we received a backgrounder as part of our information on the Ontario Media Development Corp. We received a backgrounder on tax credits for films and television production. Part of that lists the productions in Ontario. Certainly there have been some impressive productions in Ontario in 2004, including *Cinderella Man*, which is getting lots of hype right now, and a number of other very popular films. I was wondering if the development corporation does a similar backgrounder for books and sound and lists the artists and production of those different sectors as well. We didn't get that this morning and I just wonder if it's available.

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**Mr. Frappier:** My colleague tells me we can't do it because we can't release proprietary information in terms of the tax credits. We would have to go to each of the publishers and ask if they would allow us to publish that list.

**Ms. Monique Smith:** Is that, again, a product of the legislation and the differences? I guess I don't understand why you can publish the list of movies that you've given tax credits to but you can't publish the list of books.

**Mr. Frappier:** We do that through the locations library. OMDC operates one of the most sophisticated digital locations libraries in the world, so we know all the films that have come to us and we know the ones that go forward. This is not information that we gathered through the tax applications.

**Ms. Monique Smith:** OK. So this is from the location library. These are the films you've assisted through the location library and other programs of the OMDC, not necessarily the tax credit?

**Mr. Frappier:** That's right.

**Ms. Monique Smith:** That's it for me.

**The Vice-Chair:** We'll move to Mr. Flaherty.

**Mr. Jim Flaherty (Whitby-Ajax):** Good morning. I was thinking through these tax credits and what I'd heard over the years. A big complaint, and the Auditor General has touched on this, was timeliness. That's what I used to hear from the people in the business: "Where's the cheque?" A lot of the players in the business are small businesses and it means a lot to them to get the money on a timely basis. I was reading through the Auditor General's recommendations and I've listened to what was said this morning. There was an attempt back in April

2002 to improve the timeliness—there's a reference to that in some of the background material—and now there are the more recent efforts to improve the timeliness. "In April 2002, the Ontario government announced a new fast-track system to address backlogs and industry complaints." I'll stop there for a moment. Was that effective?

**Mr. Savio:** In 2002, the specialty assessment unit was established because of the sensitivity around the delay in payments to the industry. That is a dedicated group that deals exclusively with these credit claims that have been provided. The time frame, as indicated in the slides, has now been reduced: 85% of the funds are generally paid out within a six-week time frame. I would suggest that the process has taken into consideration the sensitivity of the industry and has responded to it. There is additional work taking place between the Ministry of Finance and OMDC to further streamline the process and provide to the industry as much money as possible once the preliminary reviews are conducted.

**Mr. Flaherty:** So we had the April 2002 initiative. Then the Auditor General came along and audited it and made further recommendations basically to speed things up at both places. When was the progress made, or is it a continuous effort to speed things up? I'm just trying to understand what the effect was of the April 2002 initiative and what the effect was of the Auditor General's recommendations in 2004.

**Mr. Savio:** In 2002, the turnaround time was much longer. From 2002 to now, it has been cut dramatically to the six weeks that has been mentioned several times. That is the current situation to date, and through continuous working relationships with OMDC, as well as CRA, we see that we would move forward to yet improve that.

**Mr. Flaherty:** Do you have any measures in either—I mean, I was reading the memorandum of understanding. I love government, you know. I've now figured out the acronyms, so I think I know who is who in the memorandum of understanding. I think I get it now. If anyone outside of government read this, I'm sure they'd be intimidated trying to understand who's who and who is doing what.

There's the eligibility function and there's the auditing function. Do any of the locations do any customer satisfaction work? That is, do you ever go ask people who apply for these grants, and some of whom get them, how happy or unhappy they are?

**Ms. Terry Smith:** I can speak to that. The OMDC does do round table sector discussions with the various components of the industry. They'll bring sound recording representatives in to talk about how well the programming is going, not only the tax credit program but the other programs of the OMDC, and get feedback so that each year they can look at their programs and see if they can make adjustments. They do that in all of the sectors.

**Mr. Savio:** On the satisfaction, maybe on the flip side, up until 2002 a number of complaints were filed about the processing within the Ministry of Finance—getting

the tax credits out—and the complaints now are negligible.

**Ms. Terry Smith:** I have to say as well, from a ministry perspective, that we also meet with the industry reps, who are very vocal in what they like and don't like in the programs, and we do that on a regular basis.

**Mr. Flaherty:** That's good. I was reading the various steps in the process. Has thought been given to having fewer players in the process? That is, is it necessary for the first part of the process to be done with the OMDC and have an audit function there and a certification function there, and then have, over at finance in the tax branch, the processing of the actual credit dollars? Is it necessary to have these various offices all involved in dealing with these businesses that are seeking these credits?

**Mr. Andersen:** We are in fact looking at which parts of the process could be done concurrently. There are different functions there and some different skill sets and expertise. The OMDC obviously has more working knowledge of the industry itself with regard to them looking at the eligibility of the productions that are going forward.

When the credit applications come forward, they're in the broader context of the company's overall corporate income tax return, so we're looking at more things than just the tax credit itself. Aside from our statutory responsibilities, we're looking at a few more things.

Now, that being said, we are trying to look at which parts of that could be done concurrently to try to streamline that as much as possible, and there have been some improvements made in that area.

**Mr. Frappier:** What has happened in our case is that over the years, we've developed a lot of specialists. As I said before, we have people who come from the industry who have a greater understanding. Over time, I believe these people have developed a kind of expertise that helps us respond to our stakeholders in a way that is fast and shows an understanding of their needs.

**Mr. Flaherty:** Good for you for speeding things up. I think that's great.

The last thing I want to ask about is a broader question—and the Deputy Minister of Culture touched on it—about the effectiveness of these tax credits and how things have come back quite a bit since the tax credit was increased and we're more competitive with some of the other jurisdictions in Canada.

In the auditor's report, there was a statement that "no statistics were compiled to demonstrate the impact caused specifically by the tax credit initiatives...." I'm wondering if that situation has changed. Is there anywhere, in any of the ministries or in the OMDC, that statistics are being compiled to demonstrate the impact caused specifically by the tax credits?

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**Mr. Andersen:** I'll start off and then hand it over to Ann. One of the tricky things in trying to assess the impact of tax credits is trying to isolate the impact of the credit itself versus a number of the other things that

factor into that. Obviously the Canadian dollar impacts these particular productions quite significantly. But we also have an available labour pool that's well trained, a number of good locations and a variety of advantages in that regard.

In the announcement we made back in December, we talked about the fact that when this credit comes forward, we'll be doing some of the same things we're going to be doing with other tax credits, which is that most of them will have an annual review or a performance review before the end of their lifetime. The production services credit, for example, will have an annual review, and the film one will be reviewed before January 1, 2010. We're going to be working with culture and the OMDC on what the appropriate performance elements of that might be because, aside from just take-up—that's an interesting statistic to collect, but you can't always isolate whether that additional activity is just as a result of the tax credit, particularly when, subsequent to our announcement, there were maybe three or four other provinces that made changes to their tax credits, and trying to isolate the impact of the Ontario tax credit alone is not the easiest thing to do.

Ann, did you—

**Ms. Langleben:** I think that about covers it. We will be working with the Ontario Media Development Corp. to explore the feasibility of developing specific performance targets and evaluating effectiveness.

**Mr. Flaherty:** Specifically, do you compile statistics with respect to the performance of the other Canadian jurisdictions that have similar tax credits and compare them with our own performance in this economy?

**Ms. Terry Smith:** Yes, we monitor it on a regular basis and track how many productions and how many jobs. The other thing we are working with the industry on and sort of pilot testing, so to speak, is asking individual film companies the impact, to record the expenses of a particular film shoot or a book that would have received a tax credit and to help us identify the costs and the implications of that tax credit and whether they had the tax credit or they didn't have the tax credit. We felt that if we could document a couple of examples in each of the industries, it might help us better identify key performance measures and a way to work with the industry to identify the real impact of the tax credit itself. They are now working out some processes. We're starting with a couple of film companies to help us to do that.

**The Vice-Chair:** We'll go to Ms. Mossop.

**Ms. Jennifer F. Mossop (Stoney Creek):** It seems clear, from your presentation and the conversation, that you have taken into consideration the recommendations from the Auditor General on a go-forward and incorporated those in the new program. I just want to get a sense of feedback; as Mr. Flaherty so succinctly put it, "Where's the cheque?" is one of the big things you hear from people in this industry. But I'm wondering what kind of feedback you're getting from the industry in terms of the regional bonus. Are we getting a response to that at this stage?

**Ms. Terry Smith:** Those who work in the regions absolutely love it. Those who work in Toronto think it's unfair. We have a balance. The regional bonus certainly helps smaller productions, particularly in northern Ontario, in Sudbury, and in the eastern region, in Ottawa. Particularly for francophone producers it's a godsend. So it's a balance.

**Ms. Mossop:** Again, because you have fairly constant contact with the industry, what kind of feedback have you gotten on the change in the wait time?

**Mr. Frappier:** At this point, I think they've seen a huge improvement. Three years ago, as I said before, we were something like 29 weeks at our end. We're down to 14.3 weeks as of the end of the fiscal year. As I said, we're continuing to work with our colleagues at finance and culture to streamline this process. I think that the industry is quite pleased with what's happening. Of course they'd like to have it tomorrow, but I think we are working quite hard to improve every year. We've set some goals, not only for film and TV, but for every credit.

**Ms. Mossop:** We've talked about a little bit about the streamlining of the system at this end, but do you get much feedback at the other end in terms of the ease of applying or understanding the tax credit and eligibility?

**Mr. Frappier:** One thing we've been doing at OMDC is a lot of outreach. Throughout the year we do information sessions with the different parts of the film industry: documentary, fiction, service producers and regional producers as well. We tend to go around and use opportunities to encourage people to make use of it and then do information sessions to allow them to better understand it.

We had one about two months ago where I believe we had over 100 people, to help them understand not only what we're doing but what CAVCO and other federal bodies are doing.

**Ms. Mossop:** In terms of performance measures, are you getting the response from the industry in that area? Are they working well with you at this point?

**Mr. Frappier:** I think the relationship we have with the industry is outstanding, and I think it's there because we listen; we take time to do the outreach I've just spoken about. Given that, I think they are forthcoming with some of their ideas and recommendations but also their appreciation.

**Ms. Mossop:** If I could just shift over to the content side for a minute, I'm wondering what constitutes Ontario content. Is it hockey and maple syrup? What exactly are the criteria there?

**Ms. Terry Smith:** It's not hockey and maple syrup. It's who the actual author of a book is, where they reside and those types of things. The actual content—it could be an Ontario writer writing about somewhere else, London or someplace else. It's the actual producer or author of a book or a sound recording or a record that the content—that's what the tax credit is around, and it's the person, the Ontario resident who is producing on the Ontario-based tax credits.

**Ms. Mossop:** That's fairly well understood in the industry?

**Ms. Terry Smith:** Yes. Of course it is.

**The Vice-Chair:** We'll move on to Ms. Sandals.

**Mrs. Liz Sandals (Guelph-Wellington):** One of the things that the auditor has mentioned in his report has to do with risk assessment. My sense, when I look at the report, is that there's some difference between OMDC and finance. Finance, I take it, has categories of risk assessment, and OMDC, at least at the point where the auditor was doing the report, wasn't doing a risk assessment as far as I could figure out from the report, although perhaps from some of your comments, I think you have begun to address that.

I guess the first question would be, are you dealing with essentially the same information, or are there two organizations dealing with different information because one is dealing with eligibility and one is dealing with actual expenses? Is that the reason for the difference? What sort of struck me was, if you've got a flow of similar information, why is one organization not doing risk assessment and the other organization is doing some form of risk assessment, and why the difference in the approach? If somebody from whichever ministry wants to dive in could deal with that, it would be helpful.

**Ms. Vanni:** We are dealing with different information. At OMDC we're focusing on eligibility criteria, which are not looked at at the Ministry of Finance. They're auditing the claim, so they're looking at the expenditures. We do see some information on expenditures, but where we're assessing risk is whether or not the applicants meet the eligibility criteria. So it is different information. Since the audit, we have come up with what we consider a formal document that has risk indicators for eligibility criteria, and we have that in place in our reviews now.

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**Mrs. Sandals:** So you would now have your folks who are dealing with the applicants looking at what the risk factors would be in your case, if you're dealing with a different set of information.

**Ms. Vanni:** Right. They're somewhat different across the sectors, and I imagine some of the risks are the same for the Ministry of Finance. We do look at whether or not we've seen a corporation before, if we've certified them in a previous fiscal year; if it's a television series, whether it's a subsequent cycle. So in the third cycle of a series with the same creative people behind it, it would be a somewhat lower risk. Sometimes it varies based on whether someone is a new publisher or a sound recording company that's new to the industry. Those are a few examples.

**Mrs. Sandals:** Is there then some coordination of that information? If you flag it on the eligibility side with some concerns about ability to deliver, does that get carried over to finance when it becomes a finance file?

**Ms. Vanni:** By the time we certified it, we would have resolved any issues with respect to risk. We would just have a more rigorous review on our end. But if we do notice anything in the file with respect to the expendi-

tures that we think finance needs to know about, we definitely alert them. We send them a copy of every certificate we issue with notes and with supporting schedules, if appropriate, on each file.

**Mrs. Sandals:** So if you see something which on the face of it should be eligible, given the information you've received, but you're not absolutely certain about the delivery of that, then you would flag that for finance? Am I sort of getting it?

**Ms. Vanni:** No, it's a little different. Finance won't look at the eligibility of the production or the book or sound recording, so once we've certified that, we've resolved any issues we've flagged up front at the beginning of our review. We will notify the Ministry of Finance, in cases where we're also looking at the claims for the film and digital media credits, of anything we've noticed in that claim that may be something they need to look into in more detail.

**Mr. Savio:** If I could deal with the second part of that answer, with OMDC it's very much a front end, whereas with finance it's after the fact, when the return is filed. What we would test for is actual expenditure: that the expenditures have taken place, and that the expenditures took place in Ontario, because there are productions that span different jurisdictions. Those are some of the reviews we would conduct, and they're strictly from an expenditure point of view.

**Mrs. Sandals:** So your function might be more sorting out, if some of the shooting was in Ontario and some of the shooting was in BC, that they're not trying to double-claim for tax credits in two provinces.

**Mr. Savio:** Exactly, and that certain expenditures allowed under the act are included, whereas other expenditures that are not to be included under the legislation would be excluded.

**Mrs. Sandals:** I'm pleased to hear that the risk assessment piece—I think it sounds as though you're working on the auditor's recommendation in that respect. The information we had in the report didn't indicate you were working on it, so thank you for that update.

**The Vice-Chair:** We'll go to Mr. Marchese.

**Mr. Rosario Marchese (Trinity-Spadina):** With respect to the turnaround from, I think, 29 weeks to six weeks, is that due to an increase in staff or to a streamlining of the process because you've become a little more knowledgeable about how to do that, or both?

**Mr. Frappier:** In our case, at the OMDC level, we've gone from 29 weeks to 14 weeks. I think it's a mixture of both adding some people as well as streamlining.

**Mr. Marchese:** And the Auditor General helped a little bit, right? Just a little bit?

**Mr. Frappier:** In fact, if we look at our track record for the past three years, it was before they came and visited with us, but we always welcome their input.

**Mr. Marchese:** We do too.

On page 9: "OMDC minimizes the risk of non-compliance by making certain that all its analysts are capable of assessing complex files." Does that mean that before, people were not able to analyze complex files and now they will be? If so, are there criteria that you apply

or is it just training in an overall sense or is there something specific that you do?

**Mr. Frappier:** No. We've done a lot of training, but one thing we had not done is formalize our training. We've done what we call a performance index, where each of the business officers takes a look at what some of the areas are where they would want to get even more information. We've put in place—in fact, we said we'd do it by the end of April. Now it has been formalized. This way it's sort of double insurance that we keep—we've formalized the training for these people.

**Mr. Marchese:** I was interested in the issue of content development. I'm interested in a general way to have all of your feedback, if that's possible. You might not even have a comment. I'm not sure.

Ninety-seven per cent of all screen time is controlled by the Americans—we all know that; we only control 3%—85% of the music industry is controlled by the Americans, and 85% of the book industry is controlled by Americans and, to some extent, the British. We have a little pie. Two questions: Does it concern any of you? And if so, do you have any ideas of how we turn this around?

**Ms. Terry Smith:** It does concern us; it concerns us greatly. Content is something that we work very closely with the federal government on, because copyright is within their jurisdiction. It's primarily to do with the copyright laws, so we are working with them. We are also working with UNESCO to ensure that other jurisdictions understand the value of content and telling our own stories, so there is a very large initiative underway with UNESCO, other countries, the federal government and ourselves to really develop a manifesto—that's not the word—a proclamation about the ability for countries to produce their own.

The sound recording industry recently, because of all the new technology and the development of independent record producers, has actually begun to gain some ground. Canada, as you know, has very renowned recording artists who are known throughout the world. We are gaining some ground on that. We're not yet the large music producers, but when we recently met with music industry reps a few weeks ago, they were telling us that there has actually been a slight turn in the development. So we're looking for ways to help the industry further that development, and we really believe that, through creative and content development and innovation, we'll be able to provide some ways to help them.

**Mr. Marchese:** Broadcasters have very few incentives as it relates to film to produce or help to produce Canadian-made productions or films in general. It's easier for them to buy something American, so much cheaper to dump their stuff into our markets than to either invest or give some money for our own Canadian production. Is there anything you can do to convince them or urge them to change that?

**Ms. Terry Smith:** We may be able to change policy. You should know that we work very closely with the federal government and the federal government's programs. Telefilm, for example, also supports film develop-

ment in Canada, so our tax credits and their tax credits merge together.

I think it's more finding new partnerships and new ways of working in order to increase that. We would love to say that, yes, we would like to have more money for our cultural industries and new programs. We know that's very, very difficult in these days, so we're looking at other ways to increase the industry's ability to improve their numbers.

**Mr. Andersen:** Maybe I could also answer your question from the perspective of our ministry, the Ministry of Finance. Content development is important because it actually leads to economic development. We're certainly looking to grow as many businesses as possible, especially those that have some export potential like these do. In terms of the announcement back in December, for example, about the changes to the two tax credits, just to put it a little bit in perspective, it's \$48 million in those two tax credits, so that's a pretty significant support to an industry that's seen as one of the cultural industries or as one of the greatest potential areas for the economy.

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**Mr. Marchese:** No question. I'm very supportive.

With respect to UNESCO and your submission or Canada's submission to it vis-à-vis culture, have you produced a paper yourself?

**Ms. Terry Smith:** No, we haven't. We input into the federal paper.

**Mr. Marchese:** "Input" meaning you're there, you give advice, you—

**Ms. Terry Smith:** We comment on it, we give them advice and, yes, we are going to be sitting at the—well, not at the UNESCO table, but with the federal government, and the Quebec government is very active. We are now a part of that.

**Mr. Marchese:** How would you describe your relationship, all three organizations?

**Mr. Andersen:** Great. We see each other all the time.

**Mr. Marchese:** Isn't that beautiful? So there is cross-communication, collaboration? Isn't that beautiful?

**Ms. Terry Smith:** You should know as well that there is a formal committee that meets on a regular basis, of finance, culture and the OMDC, to review the policies, the MOU and the tax credits. That does happen.

**The Vice-Chair:** We'll move back to Ms. Smith.

**Ms. Monique Smith:** On the question of cultural diversity, are you affiliated with the association for cultural diversity, the organization that comes out of Quebec and—

**Ms. Terry Smith:** Yes, we are. We're actually going to be having a forum in Ontario on this very issue, to raise awareness within Ontario on the issue.

**Ms. Monique Smith:** I just want to go back to the tax credits and the flexibility within the tax credit program. I understand that the call went out in the fall with respect to film and television and that we were able to respond. But on a micro-level, with respect to the actual requirements around tax credits, do you have any flexibility to change those requirements? What is the process for changing?

My question really stems from the books again and the fact that one of our printers is going out of business in Ontario. Right now, our requirement is that the books be printed in Ontario as opposed to printed in Canada. I know that's a concern for publishers because it really limits their ability to access the credit if we're only allowing it for certain types of books, and again, if there aren't the printers in the province, that's a problem. Is there some flexibility and is there any consideration of an amendment around that particular requirement at this point?

**Mr. Andersen:** Well, every year, as part of the pre-budget consultations, we hear submissions from a wide variety of sectors, and the cultural industries, like others, come forward with their suggestions for the Minister of Finance to consider. Most of the credit changes require a legislative change, so generally that's the mechanism by which that updating would happen. The Minister of Finance, as part of putting together the budget, looks at the overall fiscal situation, the economic strategy, and takes those into consideration in trying to decide where to make changes on a year-by-year basis. So sometimes changes are made, sometimes not. It depends on the economic circumstances, the sectoral circumstances of the day.

**The Vice-Chair:** Mr. Zimmer?

**Mr. Zimmer:** Just briefly, the scheme, as I understand it, is that the Ministry of Culture does the policy advice and certification on the applications and the Ministry of Finance processes the application, audits it, gets the money out and so forth and so on. Is there a marketing component to the program, that is, an active marketing program rather than a passive program? By passive, I mean that you've got the system set up, and do you just leave it to the entrepreneurs to dig out the program and apply, or does culture go out and seek applications and promote it?

**Mr. Frappier:** Number one, as I said before, we do a lot of outreach in terms of promoting the tax credit, but over and above the tax credit, we have a series of marketing programs that we developed in co-operation with the industry to help them market their products. We have programs that will allow various sectors to go to book fairs or music fairs or television markets so they can, hopefully, market their products. Those have been very successful in terms of what we do. Similarly, last January, the OMDC opened up an office in LA with two full-time people. We did that as a joint venture with the city of Toronto Film Office and the association Film Ontario. With the two full-time people, we have people in front of our potential clients on a daily basis. We can report that well over \$100 million of new production has come to Ontario because of the office we have in LA.

Similarly, we've done missions with the music industry in co-operation with Trade Routes. Very recently, the deputy minister and I talked to an executive at Sony who reported that because of that mission, \$1 million worth of new contracts had been awarded to Ontario-owned music publishers.

So we have a series of marketing programs that help us.

**Mr. Zimmer:** Can you give me a sense of whether you think there could be more done on the marketing side, or do you feel it's adequate? In the insurance business, for instance, the idea is to get lots of salesmen out there selling policies to generate the income—that sort of metaphor.

**Mr. Frappier:** As my colleague Mr. Andersen said, every year the industries come forward with some recommendations on what we could do if we had more dollars. Of course, we're all waiting to see the new budget. Obviously, when we compare what Ontario's doing to what other jurisdictions are doing—especially Quebec, which has put forward a sizable budget for marketing their industry, not only in Quebec but abroad—we do lag behind. Therefore, yes, absolutely, we could do with some added marketing dollars.

**Mr. Zimmer:** What's the lag? How far do we lag behind Quebec, or British Columbia, for that matter, or the other provinces—our direct competitors?

**Mr. Frappier:** In the film industry, I would say that Ontario, Quebec and BC are pretty well nose to nose, depending on the given year. I think Ontario will move forward this year. I think the impact of the increased tax credit has made a big difference. That, plus the infrastructure we have in Ontario, I believe, will show some serious results. But in terms of other marketing support, BC has some music and new media support, and Manitoba has as well, but Quebec has a program with sizable budgets for every one of their sectors.

**Mr. Zimmer:** But can you give me some objective idea about how our marketing program compares to Quebec's or some of the other provinces' that we lag behind?

**Mr. Frappier:** I happen to think that we pale in comparison to Quebec, basically.

**Mr. Zimmer:** Can you attach some figure? What does "pale" mean?

**Ms. Terry Smith:** About 50% in their programs. They have a lot more programming dollars to give to the industries. Where we provide only tax credits and very small program dollars, Quebec actually has a large pot of money to allow them to have more development programs up front, to help the industries in the initial development of their products, and in marketing. We estimate about 50%, but we'd be happy to give you an exact figure.

**Mr. Zimmer:** Yes, could you give me what that 50% represents in a dollar value?

**Ms. Terry Smith:** Yes.

**Mr. Zimmer:** Thank you, Madam Chair.

**The Vice-Chair:** Any further questions or comments? Then I'm going to take the liberty as the Chair to ask a question.

When you are looking at the risk assessment process of the applications, particularly in the area of writing up certificates, I wanted to know if there's an obvious response within those applying to understand the kinds of commitments required, and whether you can safely say

that the number of applicants who fall into a higher-risk category is decreasing or, because you're reaching new audiences in terms of the program, would it remain about the same?

**Mr. Frappier:** Our point of view is that with more knowledge—the more outreach we do, we believe that the people who apply to us have that increased knowledge, and as such, the risk is lowered.

**The Vice-Chair:** Which obviously is a good message for going forward, if people are better informed and reduce that possibility for you.

Seeing no further questions, I want to thank all of you for coming here today. We certainly appreciate that you were able to come and provide the information. Thank you very much.

*The committee continued in closed session at 1050.*





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Mr. Michel Frappier, CEO

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Research and Information Services



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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 5 May 2005

# Journal des débats (Hansard)

Jeudi 5 mai 2005

## Standing committee on public accounts

2004 Annual Report,  
Provincial Auditor:  
Ministry of Health  
and Long-Term Care

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Rapport annuel 2004,  
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STANDING COMMITTEE ON  
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES  
COMPTES PUBLICS

Thursday 5 May 2005

Jeudi 5 mai 2005

*The committee met at 0947 in committee room 1, following a closed session.*

2004 ANNUAL REPORT,  
PROVINCIAL AUDITOR  
MINISTRY OF HEALTH  
AND LONG-TERM CARE

Consideration of section 4.04, long-term-care facilities activity.

**The Chair (Mr Norman W. Sterling):** Welcome. My name is Norm Sterling. Thank you for coming to the public accounts committee. Mr. Sapsford, would you like to introduce the people who are sitting with you, and if you require the help of any of the people who are behind you, maybe you could introduce those as well if they are called to the table. I see you've given us some notes

**Mr. Ron Sapsford:** I'll speak and introduce my officials as I go through my remarks.

**The Chair:** OK. That's fine. I was looking at 22 pages, but fortunately it's large print.

**Mr. Sapsford:** And I speak very quickly.

**The Chair:** Welcome. If you'd like, please take us through your opening remarks.

**Mr. Sapsford:** It's an honour for me to be here this morning for what will no doubt be the first of many appearances that I will make before this committee in my role as Deputy Minister of Health and Long-Term Care. My colleagues and I are happy to be here to answer any inquiries you may have about our programs, operations and expenses made on behalf of residents of Ontario in long-term-care homes.

It's with that in mind that I've brought answers today regarding our programs and actions on long-term-care homes in the Ministry of Health. Following my remarks, we'll be glad to answer any and all of your questions. To help me in this regard, I have some ministry officials here today: Mr. George Zegarac, assistant deputy minister for the community health division, is on my immediate left; Mr. Tim Burns, who is the director of the long-term-care homes branch, is next to him; and on my right is Mr. David Clarke, director of the long-term-care planning and renewal branch.

In a few moments, I'll talk to the specifics of the auditor's recommendations and how we are dealing with those important comments that the auditor has made to the ministry. But first, before I get into the details, I'd

like to make a few more general comments about long-term-care homes and the importance the ministry attaches to these homes.

This sector has undergone tremendous changes in recent years: changes in types of patients, changes in demography in the population. I'd like to give you a few examples. In 1998, the province had 57,000 beds in this sector, and this year, in 2005, we have 74,000. Not only do we have more beds, but the ministry has more staff. Ministry compliance staff to monitor care in these homes has gone from 23 to 65 full-time staff since 1998.

The 2004 provincial budget made an overall investment of about \$2.5 billion for the care of residents in long-term-care homes. This spending has increased, between 2001 and 2004, by \$1 billion over that period of time. These figures give you a sense of how large this particular program is in the Ministry of Health.

I want to assure the members of the committee that since the auditor's report was released, the ministry has been moving forward with a determined plan. The plan has been responding directly to the recommendations and concerns that were raised by the auditor. We have been quietly and calmly going about making major improvements to this sector, and the ministry continues to implement substantial improvements to the long-term-care sector.

Some of the key accomplishments that have been made in long-term care over the year include an additional \$191 million, which is being invested over a two-year period in enhanced care funding and improved services to long-term-care homes.

Regulations have been introduced to ensure 24-hour-a-day, seven-day-a-week coverage by registered nurses in all long-term-care homes and to provide a minimum of two baths per week for each resident.

Over \$80 million has been distributed for medical equipment in long-term-care homes, including bed lifts, specialized mattresses and fall prevention equipment.

As of January of last year, all annual inspections are unannounced.

Through the ministry's long-term-care compliance management program, the ministry is being more thorough and more consistent in how we monitor the progress of individual homes in meeting our standards.

A public Web site has been launched that provides seniors and families with information on individual homes and their record of care.

A toll-free action line has been introduced for the public to use in registering complaints to the ministry about care in homes.

Placement regulations have been changed to enable couples who want to live together in long-term-care homes to be able to do so.

Increased funding for resident and family councils has been established to improve community engagement and to provide residents and their families with a greater voice in the day-to-day life of long-term-care homes.

The comfort allowance which is allowed to residents has been increased by more than 3%.

The resident co-payment rates have remained frozen.

We have begun work in the ministry on revitalizing standards for long-term-care homes. The ministry and its partners are taking a number of steps to clarify and strengthen the standards so that they are more resident-focused and will achieve better resident care outcomes.

As well, the government intends to introduce a bill which, with the consent of the Legislature, would create a new long-term-care homes act to govern all 600 long-term-care homes in the province.

I know the members of this committee are very aware of how active the ministry has been in this field, but I wanted to list out some of these recent accomplishments in light of the subject of this morning's discussion.

There are improvements taking place in this sector since the auditor's reports by way of sector-wide reform. Specifically, I want to respond to the auditor's report from 2004. As I mentioned, I'll cover the key recommendations and give you the implementation status of each.

The auditor has recommended that to help ensure that long-term-care homes meet the assessed needs of each of their residents, the ministry should: (1) ensure senior management assesses the results of annual home inspections for possible corrective and preventive action; (2) implement a formalized risk-assessment approach for its annual inspections that concentrates on homes with a history of non-compliance and prioritizes inspection procedures; (3) ensure consistency in the application of standards; (4) establish acceptable notification periods and conduct surprise inspections of high-risk homes to reduce the risk that homes will prepare for an inspection; and, finally, (5) evaluate the experience and skills that are required to inspect home operations and ensure that the appropriate mix of specialists is available to the ministry.

With respect to the ministry's compliance program, it's carried out by staff who are fully committed to ensuring the health and quality of life of residents. This program is supported by senior management in the regions and, more recently, with the creation of a multidisciplinary team in the ministry called the corporate enforcement unit.

In the case of early warning flags, otherwise known as the risk management framework, the goal of that framework is for the ministry to best use the information it receives and records so that we can focus and expedite inspections so that residents are safe and adequately

cared for. There's been a great deal of work on this framework, and it is to be finalized in the near future.

The ministry conducts an unannounced annual inspection of every single long-term-care home in Ontario, and we follow up on every complaint or unusual occurrence reported. Since January 2004, the ministry has conducted well over 4,000 inspections, which includes annual inspections as well as other types.

A total of 65 professional staff deliver the compliance management program at the regional level, and this number has more than doubled since 1998. The overarching goal is to bring homes into compliance so that residents are safe and receive adequate care and services. Senior management in the ministry's regional offices assess each of the inspection results for corrective and preventive actions where required.

The ministry has also initiated a redrafting process for the care program and service standards to ensure they are consistently applied in the inspection process. In the fall of 2004, all ministry compliance and enforcement staff received training based on these proposed new standards. The ministry is working toward the introduction of new legislation in 2005 that would intend to incorporate these standards.

To reinforce a consistent approach to inspections themselves and to strengthen the tools available to compliance teams, the ministry organizes annual compliance education sessions. This year marks the third annual education session.

The auditor also recommended to the ministry that to better protect the health and safety of residents of long-term-care homes, the ministry should ensure that all (1) complaints are investigated and responded to in a timely manner, (2) unusual occurrences and outbreaks of contagious conditions are reported to the ministry and recorded in our facility monitoring information system on a timely basis, and (3) complaints, unusual occurrences and outbreaks of contagious diseases are assessed in relationship to annual home inspection results to identify and resolve systemic problems.

The ministry has a good track record of responding to complaints.

Let me say that we, as a ministry, have improved upon our own benchmarks of investigating and responding to complaints. The ministry now initiates follow-up action in two business days instead of the 20 days, as was noted previously.

The growth of our compliance teams in the regions and, more recently, in the corporate office of the ministry means the ministry is more aware of the record of care in homes and more responsive to homes not meeting ministry requirements of quality care and services.

In addition to improving the response times, the ministry has also made it easier for residents and families to register complaints. A toll-free action line was created in January 2004, and since its inception we have received over 5,000 calls.

With respect to the disease outbreaks, the ministry works in conjunction with local public health units for

reporting and procedures. Once a local public health unit determines a facility outbreak is in place, the ministry has set out strict protocols and procedures supporting the requirements of public health, which include mandatory reporting by homes and requirements for quarantines and specific hygiene measures, to ensure resident safety in outbreak situations. More strict and consistent reporting requirements have also been established for unusual occurrences, such as falls and medication errors.

Again, with stricter and more consistent reporting, the ministry has better information and can respond more swiftly to care and safety concerns in homes.

A few examples:

By June 2003, ministry staff had begun recording on a monthly basis all unusual occurrences, such as falls and medication errors, reported by homes in the facility monitoring information system.

Since March 2004, all ministry regional offices record outbreaks of contagious diseases in the long-term-care system. This is in addition to the requirement for homes to report outbreaks of contagious diseases directly to their local public health units.

The ministry also released a set of respiratory guidelines to long-term-care homes in October 2004.

The ministry is now working to ensure that public health information is accessed quickly and efficiently by appropriate ministry staff to verify home status regarding outbreaks of contagious disease.

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The ministry has also issued directives to long-term-care homes and standards for comprehensive infection control programs for certain respiratory illnesses in non-acute-care institutions such as long-term-care homes. As well, the ministry is analyzing the information stored in this facility monitoring information system to better identify and resolve any systemic problems that are found.

In another recommendation, the auditor suggested:

“To help ensure that ministry policies and legislation regarding long-term-care” homes “are followed and that long-term-care service providers understand their responsibilities, the ministry should ensure that all long-term-care” homes “have valid service agreements and that each facility’s compliance status is taken into account. The ministry should also ensure that all nursing homes have valid licences as required by legislation.”

The ministry has a program in place to ensure that all licences are current, and by 2004, service agreements were updated and standardized.

This recommendation has been implemented.

The auditor also recommended:

“To help ensure fairness in the levels of funding provided to long-term-care” homes, “the ministry should adjust funding where warranted as a result of any level-of-care classification audit in accordance with its policy.”

That recommendation has been implemented.

Let me briefly say that the ministry has a process dedicated to appealing the result of the level-of-care classification audit. I would also like to add that since April 2003, a policy has been in place whereby funding is

adjusted upward or downward, where warranted, as a result of level-of-care classification audits.

The next recommendation of the auditor I’d like to speak to calls for the ministry:

“To help ensure that the funding provided to long-term-care” homes “is sufficient to provide the level of care required by residents and that the assessed needs of the residents are being met, the ministry should verify the reasonableness of the current standard rates for each funding category and develop standards to measure the efficiency of” homes “providing services; track staff-to-resident ratios, the number of registered nursing hours per resident, and the mix of registered to non-registered nursing staff and determine whether the levels of care provided are meeting the assessed needs of residents; and develop appropriate staffing standards for long-term-care” homes.

This work is currently in progress.

Long-term-care homes fall under three categories, and all three are funded and regulated by the ministry: municipal homes for the aged, nursing homes, and charitable homes for the aged. The per diem funding arrangements, care standards and eligibility requirements for admission are the same for all three types of homes.

Every year, home operators are required to enter into a service agreement with the province as a condition of funding. The service agreement requires the home operator to provide care and services for residents according to ministry standards, policies, criteria, legislation and regulations.

As for the development of the staffing information the auditor has recommended, this commenced in 2004, and we’re in the process of strengthening the reporting requirements in service agreements. The 2004 service agreement introduced a provision that enables the ministry to request that home operators provide information regarding levels of service, staffing and any other matter relating to the operation of a home. In addition, during annual reviews and other inspections, compliance staff monitor and evaluate staffing patterns of homes.

In 2005, the ministry will be moving toward a quarterly reporting cycle on staffing for all long-term-care home operators. A review of our accountability requirements for the current long-term-care homes program funding system is planned to resolve many of the complex issues faced by this sector.

The ministry funds homes using a resident-needs-based funding formula. Every fall, the ministry classifies all residents in long-term-care homes. The classification is a documentation-based system and involves coding resident care needs. The data from the classification represent almost the entire long-term-care population in homes in the province.

Each year, funding is adjusted according to changes in the resident population’s care requirements and the appropriate staffing is then determined by the home. Long-term-care operators are required to ensure that staffing mixes and patterns are sufficient to meet the needs of the residents.

To enhance the ministry's ability to assess resident care and staffing needs and identify resource allocation requirements, the ministry has initiated a project to explore the implementation of a common assessment tool, known as the minimum data set, in long-term-care homes. This is a more comprehensive assessment tool which will better reflect the care needs of residents beyond the current tool that is used.

In another recommendation, the auditor says: "To help ensure surplus funding to long-term-care facilities is accurately identified and returned to the province on a timely basis, the ministry should ensure that: audited financial information provided by facilities meets ministry needs; and reconciliations are completed and surpluses recovered on a timely basis."

In the interests of time, I think I will just say, in this case, that the recommendation has been implemented. We now have a shorter period for completing reconciliations and we have moved to in-year recoveries to improve the financial management of this program.

Another recommendation says, "To help ensure that the need for long-term-care beds is met on a timely basis, the ministry should: conduct research to determine whether its target of 100 beds per 1,000 individuals aged 75 and over is appropriate; and develop a strategy to address the results of the research."

Work on this recommendation is in progress. The ministry is conducting policy work on a long-term strategy for the long-term-care sector. We are looking into the full range of services available to seniors, including the potential use of alternative measures of need for services. This would include a review of community and home-based services as alternatives to long-term-care home placement. This ongoing work will inform recommendations made for long-term-care homes in the fall of this year.

The ministry continues to implement key improvements to long-term-care homes. A significant component is the proposed new legislative framework: revitalized standards, public reporting, risk framework and the introduction of the minimum data set on care needs. Currently in the pilot phase for introduction into homes, these supporting key areas of the reform of long-term care will help improve the overall quality of life of residents in long-term-care homes.

I have given you some detailed information which illustrates how the ministry has responded to the Auditor General's important comments. We would be pleased to respond to your questions, either today or later in written form. Thank you for your attention.

**The Chair:** OK. I have Mr. Zimmer.

**Mr. David Zimmer (Willowdale):** My question has to do with the interaction between funding formulas and unionized and non-unionized workplaces in the LTC world and how that relates to the quality of care. I have a sense that some of the LTC facilities that are unionized have to compete with the ones that are non-union. How does your funding formula adjust for the different cost paradigms in the union and non-union LTC facilities?

**Mr. Sapsford:** The focus of the formula itself starts with the care needs of residents. The only variable funding in the formula itself is related to care needs. The structure of the funding is segregated so that there are separate parcels of funding for personal nursing and personal care, there's a separate amount for other activities such as recreation and other therapies, and then a third component, which covers the hotel costs of operating the home. The formula itself is not sensitive to differences between union and non-union homes, but increases year over year are meant to adjust for that.

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There are several other pockets of special funding that homes receive. One which deals specifically with labour legislation is pay equity. In homes where pay equity has been a factor in their cost structure, the ministry does provide additional funding to recognize those cost pressures. Similarly, there are other aspects of the operation that we recognize separately, such as municipal taxes. Special amounts are allowed for municipal taxes, which would recognize some of the variability across the province. But the specific issue of union or non-union—the formula is not sensitive to that.

**Mr. Zimmer:** So in your experience, what happens in a situation where—let's take two facilities in comparable geographical jurisdictions. They're drawing from the same client base, if you will, and they have the same number of residents. One is a unionized facility and one is non-union. Does each of those facilities get the same number of dollars, following the relevant formulas?

**Mr. Sapsford:** Yes, based on that factor. They may get a different amount of money depending upon the types of residents they have, but it's a standard amount of allocation per diem for the care that they're expected to provide.

**Mr. Zimmer:** On the assumption that the unionized facilities have a higher labour cost—how do you prevent that from reflecting back on patient care?

**Mr. Sapsford:** Well, I suppose you'd have to look at the funding levels themselves, in the sense that our current funding reflects the average in the province. To a degree, the current funding levels reflect differences in wage rates, because we do deal with average amounts. There are a variety of other differences among homes that affect the cost structure as well—new homes vs. old homes; the size of the home often affects the cost structure—but the formula is not directly sensitive to that. Maybe one of my colleagues has more information that would help.

**Mr. George Zegarac:** I'll ask Tim Burns to give some more detail, but there are some pockets of funding to deal with some historical discrepancies, where we had homes that had a different cost structure: were built as a chronic facility and now are running as a home. There is some transitional funding that we have provided over the history of the running of that home, but that's basically dealing with transition costs. Tim, I don't know if you have anything else to add.

**Mr. Zimmer:** Just for instance, what happens in a situation where there is a facility that's providing some

hospital-type services and they also have an LTC part in the facility—that may be a historical anomaly—but the facility itself, because of union contracts and so on, is paying hospital rates? We know that nursing home LTC rates are significantly lower, but the facility is locked into the higher wage because it's a hospital facility, it's unionized, and so forth and so on. Can you adjust for those sorts of anomalies?

**Mr. Tim Burns:** This won't be a definitive answer. George has mentioned that we have a few homes in the system that have some particular historical arrangements. There are some special transitional arrangements for, I believe, four homes at the moment that fall largely into the kinds of circumstances you're outlining.

But insofar as how we would look at the distribution of what we call the level-of-care funding, which is the funding that we tie to resident needs, we would look at the long-term-care residents in that situation in a joint hospital/long-term-care home quite distinct and apart from any of the hospital population. There would be a separate service agreement for that program that's on that site. So we would, if you will, put a perimeter around the long-term-care home residents and assess their needs and fund them according to our level-of-care classification system. So there's no different arrangement if you're on a hospital site as far as our general funding system is concerned.

**Mr. Zimmer:** Except if the union has organized the entire facility, that is, the hospital and the LTC part of it, how do you deal with those union contract obligations?

**Mr. Sapsford:** As I said, the current formula does not recognize that distinction. It becomes an operating challenge, obviously, for the home. Our position is that where licences are granted for long-term-care homes, and the signing of the service agreement, the home is prepared to provide the service to the standard.

**Mr. Zimmer:** Now you've hit the nail on the head. In those sorts of situations, the operating challenge, as you described it, rests with the home, does it?

**Mr. Sapsford:** That's correct.

**The Chair:** Mr. Brownell, we'll let you go ahead.

**Mr. Jim Brownell (Stormont-Dundas-Charlottenburgh):** I have a question with regard to the level-of-care classification audits. I come to these committees learning something new every day. I really didn't know that there were, I understand, six classifications, is it? Well, there are the classifications, anyway. Who administers these audits? I see that the recommendation is that there's ensured fairness in the level of funding and the ministry should adjust the funding where warranted, but who makes the determination at the nursing home level?

**Mr. Sapsford:** For the specific classification?

**Mr. Brownell:** Yes.

**Mr. Sapsford:** I'll ask Mr. Burns to respond to that.

**Mr. Burns:** I'll give you an overview of how the process works. We have a classification instrument that was implemented in the early 1990s and we've used it consistently every year. We have about 150 trained nurse assessors who go out in the fall each year. They apply

this instrument to the documentation on hand for every resident in the system

It looks at eight key indicators and then derives a level-of-need index, A through G. I think perhaps that's where you got the six from. It's level A, level B, level C and so on. So they look at eight indicators that have to do with ability to cope, so potentially cognitive impairment, ability to deal with activities of daily living, such as can you eat independently and do you need assistance to get dressed, that kind of thing, and some other factors.

Based on that, they develop a determination as to which of the categories a resident falls into, A through G. Then the resident population of the home as a whole is averaged and that's compared with the provincial measures. So you know an individual resident's needs, the needs of the population of the home, and then how that population compares relative to other homes in the province. This is used to balance what we call the level-of-care funding system. That's how that system works.

**Mr. Brownell:** One of these 150 assessors would visit every patient at a nursing home or a facility in the province?

**Mr. Burns:** Yes, with some minor exceptions. I'm not going to recall them all, so I'm not going to venture it, but depending on whether you arrived at the home only within the last couple of weeks or were palliative—so it's not 100%—it's about 80% or 90% of the residents every year. So 64,000 were assessed this year. We do that year over year so we can track the evolution of care needs.

**The Chair:** Before you came into the room, the auditor gave us a spread between one and eight as being between \$49 and \$62.

**Mr. Jim McCarter:** What I indicated was that there are different funding levels, depending on the level-of-care classification, with respect to the nursing and personal care component. I was indicating to the committee—I think the numbers I had were three or four years old, but it was something like \$48 to \$62, and the committee was just wondering about what was the range, how big was the range between whether you were a very high-need person as opposed to someone who was very self-sufficient.

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**Mr. Burns:** I can give you a description of how the range would be established. I said that we go out and do individual residents, and then we get a home population and we can compare that home to other homes in the province. So what we would develop for your case-mix index as a home would be based on your home's population and how that is relative to other homes in the province. So I'm not going to be able to tie it back to an individual resident.

**The Chair:** That wasn't the concern. The concern was are they going to turn back the very critical patients, the hard-to-handle patients, because they're not getting enough, and are the very easy cases getting too much? There was some concern by some MPPs that if you had somebody who had Alzheimer's and it was hard to find beds there, was the range wide enough? Perhaps if you

would like to reply in writing, that would be just fine, in terms of what that range is.

**Mr. Burns:** Certainly, to provide more detail, at least as it pertains to the existing system, I'd be happy to provide that in writing. The broader question of what's recognized or not by the funding system is—

**Mr. Sapsford:** If I can add to that, I think it's important for you and the committee to understand that I made mention of the development of a new measurement tool. That really is to provide a better grounding in the clinical information presented by residents. We feel that we need more information to refine this level-of-care approach, so we have more accurate information and we include other aspects of care of the resident, such as mental health and behavioural needs, which the current tool does not really reflect very adequately.

So the principle of what we're trying to do with the funding is to provide sufficient resources for the requirements of the residents, and the question about the range is well taken. The objective, however, is to ensure that we are providing adequate resources for higher-level-need residents.

The criteria for admission to a nursing home, though, is quite clear. We've not yet had any evidence that homes are refusing admission to residents who do fit the general categorization for long-term care homes. The other indicator in the system that would help us measure that is, of course, the problem of hospital admission, so patients waiting in hospitals for admission to long-term care is another critical indicator that is monitored to ensure that there's appropriate movement of patients and residents through the health care system.

**Mr. Zegarac:** If I could just add briefly, the other tool that the deputy referenced in his opening remarks was the minimum data set that we'll be looking at to really try to relate this to outcome. That will be part of the research that'll help support, how relevant is that gap and how do we relate this really to the outcome of the residents?

**The Chair:** The deputy mentioned that part of the need is to not block beds in the hospital. Do you have numbers, going over the last five years, as to how that has improved? If you have 17,000 new beds, presumably you've unblocked a lot of hospital beds.

**Mr. Sapsford:** I believe we could provide some information on that, yes.

**The Chair:** Thank you. Mrs. Munro?

**Mrs. Julia Munro (York North):** Thank you very much for coming this morning. I just want to follow up on a couple of the ideas that have been presented at this point. Obviously, the question about the flow between hospital beds and long-term beds is certainly something that I think we're all conscious of, whether it's anecdotally, in terms of any kind of personal family experiences, as well as from a systemic perspective. Are the long-term care beds in the right place at the right time in terms of the opportunities for people to move from hospital beds? That's certainly something that I think is really important.

I wanted to ask a couple of questions in some of the other areas, particularly around the risk management

framework that the auditor referred to. Perhaps displaying a naïveté on this issue, it would seem to me that given the kind of regulatory framework under which all long-term-care facilities operate, there would be few who would wish to put themselves at risk in terms of their management. While I certainly appreciate the need to have regular unannounced inspections and things like that, I wondered if you could comment on the benefit of the risk management framework from the sense of reducing the number of potentially at-risk facilities.

**Mr. Sapsford:** I guess one needs to be careful about the use of the word "risk." We refer to it from a systematic and generic use of the word. The purpose of this, of course, is to identify areas where there may be an indication of something more fundamental going on. So in identifying risk factors and identifying them during inspection or complaint investigations, we use them as indicators for something more fundamental going on. The development of the information system that the auditor talked about, where we're compiling this information and looking at it more systematically, will help us to see if there are fundamental things that need to be changed in the system. So it's not from the perspective of, "Oh, it's risky and we're going to handle the risk that exists," but identifying occurrences such as falls would be one; another one might be bedsores of patients. To identify these sorts of symptoms or characteristics allows us then to look more systematically at the care in the home.

The object of the risk framework is to identify outcomes of care or aspects of care that are not desirable and to use that as a way to, first of all, correct problems and, second of all, look at more systematic policies or standards that could be implemented to reduce risk in the future. So that's the purpose and function of the framework that we're talking about.

**Mrs. Munro:** I think it's important not only for us to understand that, but also for people generally. I think of a year ago, when there was a great deal of press attention drawn to specific situations which, obviously, all of us would find most objectionable. It naturally reflects then in a way on all providers, but also in terms of government and the oversight that people expect government to be taking. So I think it's really important for us and the general public to understand the kind of detail that you are working on and the benefit that it is going to provide to the system overall.

Are you able to look at other jurisdictions and the kinds of standards in this particular area of risk and to look at their success with a risk framework?

**Mr. Sapsford:** As far as the development of this, I'm not sure. But in general terms, certainly we're looking at a policy review in a number of these areas in the midst of it, and looking at other jurisdictions is certainly part of it. As we look at legislative reform as well, we will be looking at other jurisdictions, in this country as well as in others, to inform our discussion. Other sectors of health care also lend tools and measures that we will be looking at as well. In fact, the risk framework itself is used in

other sectors of health care to ensure that the standards in quality of care are maintained at as high a level as is possible.

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This ministry takes extremely seriously the responsibility of compliance with legislation and policy in this particular area. I hope you note from my remarks some of the things the ministry has done in the last year or two to strengthen that sense of responsibility in ensuring that care standards are maintained in the province. It's quite clear to me that we'll be doing more in the future. This is a very sensitive and very vulnerable population of Ontario residents. Certainly we're very engaged in ensuring that the framework around how care is given and the standards we would all expect are in fact achieved and maintained.

**Mrs. Munro:** I think we're all on the same page on that one.

I wanted to ask you about an issue that actually came to me from a constituent. His concern was that he believed there was a reduction in staff. I wondered whether or not, given my understanding of the regulatory framework upon which any facility would operate, it reflected more a change in the capacity of the facility as opposed to any other driver.

**Mr. Sapsford:** There are probably two or three factors that could lead to that perception, and one could be a change in capacity. The major one, though, would probably be the funding formula itself. As we've already explained this morning, the level-of-care system is adjusted annually based on the population of residents. One of the comments—or criticisms, frankly—from the auditor was that the ministry was adjusting the funding amounts where the care in the home actually fell over time. Because we're now doing these recoveries, if there is a substantial change in the care needs of a particular nursing home, the funding is reduced, because the requirements have gone down and that would lead to some adjustments in nursing home staffing levels.

The other was occupancy. Sometimes the occupancy in a home does fall, and consequently the staffing levels fall. Occasionally, as part of enforcement, the ministry will actually freeze admissions to a home, in which case the number of residents will fall, and consequently the staffing levels will fall.

There is usually a reason behind it, and those are typically the ones you would see.

**Mrs. Munro:** I wanted to ask you a question about the higher level-of-care component within a facility. Would they be characteristically similar, or would there be facilities that would tend to specialize in specific levels of care? In other words, are we going to see some where there aren't very many people who would require high levels of care and others where the decision would be to have the opposite kind of client?

**Mr. Sapsford:** The way the program is structured, there is no purposeful segregation in that manner. There is always, from home to home, a variation in the kind of residents. Over time, some homes tend to congregate a

specific type of resident. So you may find that some homes have speciality areas in behavioural problems or mental health, and some have specialized units, or separate units, to deal with patients of like type. Similarly, patients who are bedridden and require a certain type of nursing care, a routine type of care, may congregate those residents in different parts of the home to provide more consistent nursing care.

As I said, I think you'd find some variation across homes, but not to the extent where 50% or 100% of their population is this particular kind of care versus another. I don't know whether my colleagues can add to that.

**Mr. Zegarac:** I'll just add that I think there definitely is a variance around the homes and how they themselves approach the issue. We're well aware of the issue of how we handle and invest most effectively and use our resources around those specialized needs. We are looking at examining the effectiveness of how different homes are dealing with that, so that we can look at how we can guide homes in the future around dealing with specialized population needs. So it's an issue we are looking at.

**Mrs. Munro:** If I could just bring an aspect of that to our discussion, one of the comments that has come, again from a constituent, is that you have people of a much younger age who may need the kind of care a long-term facility can provide. Of course, the tendency is that those people are with people who may be 30 or 40 years older than they are. There is perhaps an opportunity to be looking at the kind of special care needs of a much younger population.

**The Chair:** Andrea?

**Ms. Andrea Horwath (Hamilton East):** Good morning. I wanted to ask some questions around the service agreements. I know that in the documentation you indicated in your opening remarks that service agreements are now up to date and in place in all facilities. Looking at the kind of standard service agreement, they indicate requirements around where new envelopes, the additional funding, the extra money needs to be spent. I think the first section, up until December 31, 2004, is a little more flexible, recognizing, I guess, that there are transitional requirements. When we get into 2005, the requirements are a little bit more stringent in terms of ensuring that the nursing and personal care needs is where that money is going.

We're hearing some concerns around where the accountability is to ensure that funding is actually going to the provision of extra personal care and extra nursing, as is indicated and signed off on by ministry and long-term-care providers. Could you provide some information?

**Mr. Sapsford:** I can certainly start. The allocation of those funds was for specific purposes. Some of the flexibility really was to give the homes an opportunity to begin to hire staff and to put the requisite staff in place.

As far as the accountability portion of it is concerned, the agreement says the homes may only spend the additional funding for nursing and personal care. We've just received, actually last month, the results of our first

survey, where all long-term-care homes are required to report to the ministry actual nursing hours by category and expenditures over a period of time. That first period was prior to the introduction of the funding. We will be taking a baseline of the amount of nursing staff and hours that in fact were provided. Then the second survey has gone out for the next period of time. So we're in the midst of doing the analysis on the first piece of information, which would give us the baseline, and then from that point on, we intend to have quarterly reporting so that we can actually monitor the change in nursing hours and expenditures. That will be the principal way we'll monitor the compliance with the service agreements.

**Mr. Zegarac:** If I could just add to the deputy's comments, as he mentioned earlier, this funding is in specifically targeted envelopes, so if that funding isn't used for the intended purpose, we recover that funding. So the incentive is there for them to staff up and use the funding as intended. We also do reconciliation, and it's audited. I think those provisions will add to the accountability.

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**Ms. Horwath:** Just following up on that: So the baseline data is in; you're now in the process of the second leg of the survey to begin the comparison process. When would you expect to have your first piece of comparative data available?

**Mr. Zegarac:** There are about 40 homes still outstanding on that second survey. Those are due by the end of this month. So we're hoping, in the coming weeks, shortly after that, that we'll be able to analyze and report, probably in a month after that point in time.

**Ms. Horwath:** So mid-year, June?

**Mr. Zegarac:** Yes.

**Ms. Horwath:** Just to be clear, this will now become a routine reporting requirement that, every three months or so, an automatic survey goes out and comes back in, and there's, I guess, a system of technology that plugs the numbers in and spits out the information?

**Mr. Zegarac:** Absolutely.

**Ms. Horwath:** Then can I just ask, in the same vein around the extra funding provided for extra personal care and extra nursing staff: How are you making sure, or are you making sure or is there a way to ensure that, for example, the requirements for bathing don't cause other parts of people's personal care or needs to be reduced so that they can get the bathing in, because now that's a specified requirement? Do you know what I'm saying? How are we making sure that, where specified requirements are implemented like the bathing requirement, that doesn't reduce the quality of care in other areas of a person's needs?

**Mr. Zegarac:** I'll start on this one. First of all, we look at our compliance around the risk management framework that we've been speaking to. So the intent is that we're funding, obviously, those things that we think are most important in terms of the care and in the risk around the residents, but what we want to do is ensure that we can work with the homes to look at ensuring, in

terms of our compliance reporting, that we're focused on the most important things, and that's where I referenced that relationship to the MDS system and the health outcomes. So that's what we're going to be evolving through and working through: ensuring that our compliance and enforcement activity and the homes are focusing on those things that are most important to securing the best health for the residents and the quality of life.

**Ms. Horwath:** The reason I raise it—and you may have heard—is that this is a concern that has come forward in terms of changing the requirements or reducing the number of times, for example, that adult diapers get changed, because they just don't have the time, so they're not going to bother. They let those garments fill up to their capacity, which means, then, that people are often sitting in their own waste for hours on end. Is that really appropriate in terms of a quality-of-life measurement?

**Mr. Sapsford:** Of course, we would say no, that isn't, but that becomes the ongoing challenge for our inspectors. So if they went into a home subsequent to this and found evidence that, from previous inspections, something else was giving way, then they would take note of that and require compliance.

The specific issue here is that additional resources have been provided to augment the care. So from the ministry's perspective, we wouldn't expect to see any diminution of service in other areas, because additional resources have been provided. So through the risk framework that we've talked about and, actually, the inspectors going in and monitoring the care, looking at charts to ensure that there's appropriate documentation of care, I would expect that we would identify additional problems through that mechanism or through complaints or other tools that we have.

**Ms. Horwath:** Just one last area: You talked a little bit, in your comments, about the future in regard to legislative change. I know that this is all specific to the 2002-04 Auditor General's reports, but there have been subsequent things that have occurred in this sector. I'm thinking particularly about the Casa Verde inquest. I know it's not part of this, but do you see things coming forward like ratios of nurses, for example, or personal care workers to residents, and things like dealing with the efficacy of permanent staff as opposed to contract staff? Are any of those kinds of issues on the radar? That might not be a fair question, but I think we need to take all information as we move forward, particularly toward legislation. Are these things in the hopper in terms of the way that you're thinking about change to the sector?

**Mr. Sapsford:** The short answer, I suppose, is yes; they're under active consideration. I referred to a couple of policy review processes, both on funding and on care standards. The work we're doing now, where we're actively surveying nursing homes for their staffing hours, will immediately establish at least a floor.

I guess our concern is that when people talk about standards of staffing, they're talking about a number. As we've tried to indicate to you, in long-term-care homes,

we're more interested in providing staff to the needs. Within a flexible range, I think it's quite clear the ministry is moving toward active consideration of being much more definitive about expectations around staffing. What the specifics of that are I can't tell you today. That's a matter of discussion, and ultimately the government will have to come to some decisions about that. But it's certainly very much part of our work agenda.

**Ms. Horwath:** In your comments you do mention the expectation that legislation will be forthcoming in 2005. Is that still the target?

**Mr. Sapsford:** That's the current intention.

**Ms. Horwath:** If I could ask one last indulgence, just following on the previous comments around young people: I come from Hamilton, and there are big issues right now in regard to a particular facility where some decisions have not been finalized. It seems to me that the issue is the extent to which a person's quality of life can be addressed when they are living with people who are 30 or 40 years older. It's not just a matter of physical care; it's a matter of social opportunities; it's a matter of peer groups and those kinds of things. I'm just wondering if purpose-built facilities for younger clients who need long-term care are something that's being considered.

**Mr. Sapsford:** At the present time, it's not on our policy agenda to look at specifically. I believe it will come up. The auditor suggested we look at 100 beds per 1,000 population over the age of 75. In examining that again, we're looking at a broader range of questions: Do we need 100 beds per 1,000, or are there other ways of providing care closer to the community, such as more supportive home care? Those sorts of options may shift the need for in-home residential care.

For the younger adult population, I would suggest that's an even more urgent question. Finding specialized facilities à la long-term-care facilities would be my last option. So as part of that review, we will probably be looking at that particular question in a broader context than simply that of, "Let's have purpose-built long-term-care homes for people under the age of"—and then pick an age. It becomes a difficult policy question. We're trying to address that issue from a broader perspective. Without projecting results, it may ultimately come on the agenda, but it does not currently.

**Ms. Laurel C. Broten (Étobicoke-Lakeshore):** I wanted to get some clarification on a statement made in your opening remarks with respect to the investment of \$191 million over two years. It's my understanding that the projected funding for 2005-06 is \$191 million for that fiscal year. The issue in 2004-05 was that the announcement was not made soon enough in the year to be able to fully flow the entire \$191 million. I think we've had flow-out of \$135 million of actual funding in 2004-05. If you could just clarify: The statement would seem that it was over two years, but I believe it is annualized funding at \$191 million.

**Mr. Sapsford:** That's correct. It was a two-year implementation of the full amount. So the \$191 million is the fully annualized amount. The additional funds began to flow effective, I think, October. As I've already men-

tioned, the uptake of additional staff takes some time. The full expenditure won't be realized until some time in this current fiscal year.

**Ms. Broten:** OK.

**Mr. Sapsford:** If I might add, some portions of the \$191 million are also for what we call alternative level-of-care program, and on that particular part of the expenditure, we are developing a more specialized unit in some nursing homes for convalescent patients from hospitals, and we're in the midst of an RFP process to solicit proposals. So the balance of that \$191 million in fact has not flowed yet because we're waiting to make decisions on which homes will receive that specialized funding.

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**Ms. Broten:** Can you give us a little bit more background on that alternative care strategy?

**Mr. Sapsford:** I will start. We start in hospitals where in-patient medical beds have patients who require not acute intensive medical care, but a longer period of convalescent care. This proposal really came up through the health care system to the ministry. It was to develop a limited number of more specialized beds in long-term-care facilities that could provide more convalescent care that typically had been provided in the hospital. By moving patients to those convalescent or alternative level-of-care beds, we could free in-patient medical beds in hospitals, and hence improve the access to in-patient hospitals through emergency departments. So that particular funding was allocated to implement those specialized units. As I've said, we're right at the decision-making process about which homes and where the allocations will go.

**Ms. Broten:** So by the end of fiscal 2005-06, just over \$46 million will flow out, is my understanding.

**Mr. Sapsford:** Yes.

**Ms. Broten:** But in the current 2004-05 year, even though funds had been allocated, those funds were not able to flow because of the uptake issue you've mentioned?

**Mr. Zegarac:** If I can comment on that, there were 171 homes that we moved on immediately. Those are predominantly in the northern areas and, as we talked about, there are some areas that are underbedded and have severe needs. Those have been allocated and funded already out of last year's money. There are 25 convalescent beds that have been allocated. It was a pilot that we had run in Ottawa. So 25 of those beds have been allocated. It's the remaining portions that will be allocated this year.

**Ms. Broten:** Just to pick up on a question that Ms. Horwath was asking about, as we see the ministry really identify specific areas where money will flow to accomplish a certain goal, historically we've had citizens in the province who have said, "Government has flowed money for additional nurses, but in fact we're not seeing additional nurses in our long-term-care facility. We think it got used for raises or whatever it would be." I wonder if you could just go back to the issue of accountability and how, with each one of these specific line items that's

to accomplish a certain goal, we are going to be able to know at the end of fiscal 2005-06 that the money has been spent on those specific areas.

**Mr. Sapsford:** Principally on the question of nursing and personal care through the survey methods I've talked about already, other allocations have gone out to long-term-care homes this year for acuity adjustments. The question of additional revenues to homes to offset the costs of increased wages and so forth were at least partially accounted for in a separate allocation to long-term-care homes. Our expectation is that we should see a substantial change in the number of nursing and personal care hours as a result of this allocation. As has been said, the surveys that we're in the midst of conducting should provide the accountability back around that and, if it isn't there, then the ministry will be making recoveries in-year.

**Mr. Richard Patten (Ottawa Centre):** Thank you for your report this morning. I'm interested in the area of standards, and some comparative ones. I appreciate it's not just numbers. I fully appreciate that, because one of the hazards of government is flexibility in looking at each home as different, each community as different, yet the push is to always have a universal standard. You've always got that conflict, so I do appreciate that.

I want to say that—I'm from the Ottawa area—I get fewer complaints now than I did few years ago, when it was almost a daily occurrence, much of which was around the Perley-Rideau home. That is a very sad historical experience for the provincial government, in my opinion. It still has a way to go. I used to get complaints about family members having to complement the services of the staff, and that each year the home was required to drop staff on a six- or seven-year plan, when the deal with the old Perley hospital was that they would be a multi-service facility and then the government reneged on that. That is a very strong sore point, I want you to know, in our community.

Having said that, I know the inter-relationship of home care for certain homes has improved a little bit, because you have more resources now, and so does your portfolio. I'd like to look at an area that I haven't seen in the report, and that has to do with nutrition and personal care support, such as dental checkups. These are for those who are somewhat confined to homes and it's very difficult for them in terms of mobility to get out to see a dentist or, for some reason, it's not identified. One of the areas that has been identified on a number of occasions is the visitations. There is a possible bill in the works that may address this, certainly with the dental hygienists, that I think would be a good thing.

I'm rambling a little bit, but when I heard \$4.55—is that still what the food budget is per person in homes? If it is, tell me how you can do that. Three meals a day plus snacks for \$4.55.

**Mr. Burns:** This is another area where some of the earlier discussions we've had—the operational implementation belongs with the home and there are challenges, but the raw food amount is now \$5.24. I suggest to you it's important you consider that that is a protected

amount, which means it's the minimum that can be spent, not the maximum, and there's some flexibility. We've mentioned the envelope system; it's a sub-envelope, if you will, within a bigger one, and it's a protected amount, not a maximum.

**Mr. Patten:** How would that compare to the actualities?

**Mr. Burns:** We would have, through our reconciliation process—I could get you some information on actual expenditures, but I couldn't hazard a guess right now.

**Mr. Patten:** You have dietitians or nutritionists in the system. Is that standard universal in all homes that receive government support, in terms of the quality of food, the nature of the preparation, the nutritional value?

**Mr. Zegarac:** If I can comment on that issue, over the past year we've been working on a draft regulation around nutrition and hydration, and this is one of the areas where we're looking to improve on our standards. That will be something that will be coming with a number of other regulations we're proposing as part of our regulatory and legislative package. I can just speak to the fact that I think there will be changes in that area in the future.

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**Mr. Patten:** I've been doing some reading on the area of hydration. In fact, there's a whole book on the area of, "You may not be sick, you may be dehydrated." It's a profound book because this doctor points out that as we age, we lose our capacity to identify when we're thirsty. If that's so, that has profound implications for personal care workers and their attention to make sure that individuals drink good, nutritional water each day.

When you look out, you must have some indications of how we are doing in relation to other jurisdictions. Which jurisdiction or province would be the finest in the land, as it were?

**Mr. Burns:** Ontario. I can tell you at this point, as has been suggested, that we've invested some staff effort and work with the sector on nutritional guidelines and standards as a priority. I can only agree with you that the nutritional status underpins your overall health status, so we identified that as one of our fast-track standards. I can assure you we did look at other jurisdictions in the course of doing that study.

**Mr. Zegarac:** If I can comment on this issue, I think it's always difficult when you're doing comparisons. We have, for example, significantly increased our compliance enforcement activity, so we'll find more issues. Many provinces have come—recently we've had provinces come because Ontario has been referenced as a benchmark. We share information. We look at that. At a point in time, we'll all be at different stages, but I think Ontario definitely is forward on many of those issues. We're looking to improve ourselves even further.

**The Chair:** I'd like to clarify that as I get older, I don't have any trouble at all identifying when I need a drink of Scotch.

**Ms. Broten:** I have one follow-up question to the questions I was asking earlier. In my own community, I

had the pleasure of connecting with my long-term-care homes to learn about the bed lifts and some of the equipment they were going to be purchasing this year. In your earlier statement, you made indication of an allocation of \$80 million to equipment. I just wanted to confirm that what I would have been hearing in my own community would have come out of, I'm assuming, the \$80 million in allocation, which is fully separate from the \$191 million we were discussing earlier.

**Mr. Zegarac:** Yes.

**The Chair:** On page 3 of your opening remarks, Deputy, you talked about the spending in the long-term sector increasing by \$1 billion from 2000-01. How would you characterize that huge increase in the health care area? Is this sector taking over some functions that the hospitals provided before or some other part of it, or was there just that huge need that wasn't being fulfilled in the past?

**Mr. Sapsford:** Maybe one of my staff can actually give you the proportions, but there were two basic reasons. One is simply the increased cost of operation and increases to the allocation year over year. An example would be this \$191 million over two years for additional care. But remember, as well, that over this same period of time there have been thousands of new nursing home beds opened across the province, so a large part of that increase would also be related to an expansion from what was 57,000 to 74,000 beds. That is a large part of the growth.

It represents growth in the sector as a whole. However, it does, by and large, reflect the need for this kind of care as our population ages. Whether it's the exact right number, whether we need to do more, whether we need to modify it, whether we need to look at increasing the ability of homes to take care of heavier-care patients—these are all part of the adjustment process we now have to go through. There's been a huge capacity increase in long-term-care homes, and now we have the base on which we can begin to look at the program policies so as to best use these resources in the process.

Those would be the two major reasons where the \$1-billion change over that period of time comes from.

**The Chair:** I guess I have a difficult time seeing a budget increase by—what would it be?—70% or 80%, from \$1.5 billion, presumably, to \$2.5 billion, without some kind of justification.

**Mr. Patten:** They're playing catch-up.

**The Chair:** Is it catch-up? That's what I'm asking. There was some catch-up, no question, but I know that in Ottawa, for instance, there was a waiting list of 1,400 people, but when the call came, only a third of those people would actually occupy a bed. The waiting list didn't match the need. I think we may have put 1,000 beds into Ottawa. Where did the other 500 people come from who are occupying those beds?

**Mr. Zegarac:** I'll start by commenting. Part of this is definitely an expansion of capacity. We expanded by 35%. That's a good portion of the attribution. Part of the problem, if we can look at wait lists, is that wait lists grow, and then when people get frustrated, they just don't

bother to search for that capacity if they don't think it's there.

Our residents have historically been getting older in age, and while we are trying to provide additional home care services, we're going to have to adjust and continue to monitor. That's one of the efforts we're focusing on: How do we better assess the needs in those communities? We're looking not just at the supply but at the demand for those services. That's what David's group is focused on doing right now. They're looking at what we need to adjust in this, recognizing that there are other capacities in the community that we'll be investing in that may be more appropriate for the needs of the resident. What is it we want to have available in the more institutionalized, the hospitals, for those with the highest-level acuity, and then into long-term-care homes? We're trying to continue to monitor and adjust. I think that's one of the historical problems. We look at points in time, and then we react. Right now, we want to have ongoing assessments of those needs.

**The Chair:** I guess I'm still not getting the answer to my question. When you go up by \$1 billion, we just can't afford to keep going up by those kinds of numbers and sustain our system. What I was looking for was whether there was part of those 17,000 beds that you could say would have been for people who would still have been in the hospital or in some other form of care that we might have provided. I'm also concerned that people may be in a higher-cost bed of \$100 or \$110, depending on whether you put capital in or not, approximately. Should some of these people be in less intense, less costly institutions on the continuum of care we provide for our elderly?

**Mr. Sapsford:** I follow. I can't quote systematic numbers to you today, Mr. Chair. We talked earlier about patients in hospitals. I can give you first-hand knowledge from my own experience, most recently in Hamilton. The hospital there at one point had 132 patients in the hospital waiting for placement in long-term-care homes. Subsequent to new nursing homes opening, that number fell. In one month, it was as low as 10 patients.

The overall strategy of expanding the capacity of the long-term-care system has in fact relieved to a degree the pressure on acute in-patient units. I've seen it first-hand. That allows more care in the hospital; it's a more appropriate use of resources.

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There are other examples where patients in chronic hospital often would only need extended levels of care. So I've also seen it where opening nursing homes has allowed freeing up of other, more intense resources for better use. There are limits to that, and I'm not aware that we have a systematic measure of that shift at the moment.

**Mrs. Munro:** Just a couple of questions.

When you gave your presentation, you referred to the facility monitoring information system. When I asked a question on the first round, I asked about the risk management framework. I'm assuming these two things are closely related, but perhaps you could confirm that for me or not. Would the benefit of the one, then, impact on the other?

**Mr. Burns:** The answer is yes. When the deputy framed his first response, he suggested—because you were concerned about how much risk was acceptable; not to put words in your mouth. The risk management framework operates, I think, in two important ways. One is to look forward to see how we can better reduce risk going forward. So that's where you get sort of system level indicators, if you will.

Operationally, the bulk of the data in that system derives from the compliance inspections. So they go out, do an inspection, come back, and there's information that comes from that. Then there's what you could call self-reported information, like unusual occurrences.

Then, in practical terms, how we operationalize the other side of a risk management framework, which I would call resident protection, is that we use it to see who's where on which indicator. So we look at things like medication issues or nutritional problems, that kind of thing, and we say, "What are our priorities, then, in terms of who we're going to visit, where the follow-ups need to be, who needs to get the next surprise annual inspection?" That's how we take it and apply it in practical terms, because you can't wait for the system to be perfect.

**Mrs. Munro:** I guess from my perspective as an MPP, obviously what I want is that you can't find anybody who falls into that category. Seriously, you want it so that anyone whose family member is a resident is guaranteed the kind of security and management that obviously reduces risk. That was why I asked about, first of all, the risk management side, but also, then, how the other would fold into establishing risk management.

**Mr. Zegarac:** The other thing I'd like to just bring to your attention is that we've also, in addition to our responsiveness on complaints and increased investigations, invested in resident and family councils in the homes so that they can participate and inform us of the issues in the homes. They can participate in the day-to-day decision-making in supporting the homes around the needs of their family members or their own needs in those homes. So we've layered different appropriate vehicles to share that information with us. That's just another one I wanted to bring to your attention.

**Mrs. Munro:** I appreciate that.

I wanted to ask you about the study that you're doing on the 100 beds per 1,000. I appreciate in your comments that you suggest it would be later this year that you would be able to provide some kind of information on the study.

One of the things I'm conscious of is that people who are under 75, if we're going to use that line, say, "Yes, my parents are there, but I don't want to go there," and the fact that I've heard that kind of comment among people who would be kind of the next generation to go to a long-term-care facility.

I also appreciate the fact that people are living longer. I just wondered if in your research you had run across this kind of attitude and whether it's significant enough to be of concern or not, and also the question of longev-

ity. I understand that within a few years there are going to be so many more people who reach 100—things like that.

**Mr. David Clarke:** I think that's one of the reasons we're looking at the criteria that we had used previously. The 100 beds per 1,000 people over the age of 75 was the only tool the ministry had available at the time to figure out where the beds should go. But now, as we're building them and seeing that there are areas where we have too many beds and other areas where we don't have enough, we need to understand what's behind that and the demand side of the business, and to look at alternatives and other ways of serving the same population. The deputy mentioned more home care, supportive housing, looking at the alternatives. As you mentioned, long-term care isn't the answer for everyone. So we need to look at all those alternatives.

As for the increase in the number of senior citizens in Ontario, it will be booming over the next little while and we're also seeing higher instances of Alzheimer's and so on. We need to look at how we serve those populations. Those are some of the things we're looking at. It's just a broader perspective on what is the best way to serve the needs of the population, going forward.

**Ms. Horwath:** I just wanted to follow up on the alternative levels-of-care program and ask two specific questions; one is, how much of the \$191 million is allocated to that alternative levels-of-care strategy?

**Mr. Zegarac:** It's \$46 million.

**Ms. Horwath:** So is the alternative levels-of-care strategy a continuation of the sustainability program that ended at the end of last year, or is that different?

**Mr. Zegarac:** No, it's not. It's completely different, yes.

**Ms. Horwath:** That's it. I had those last two.

**The Chair:** We were discussing in the closed session some people who represent different areas. As MPPs, we receive complaints from people who have retirement homes. In the area that I represent, I've got some very, very good ones and one or two that I don't classify as that good. The very good ones are saying that when somebody goes to the CCAC they're never considered as an option in terms of reference of that particular person, who can no longer stay in their home.

Is there any policy that the Ministry of Health is developing to try to divert people into a less costly area of care than we have now? It's particularly pertinent when we have a large increase in our capacity in long-term care. There's actual competition for clients and residents. So, in the overall cost of providing this system, I think it's important for us to use a whole continuum of care in terms of what we're offering, especially if they can be taken care of in a less costly facility.

**Mr. Sapsford:** I would agree with that view. As my colleague has said, we are in the midst of looking at some of those issues now.

As to the specific question about CCACs and placement, they use a standard assessment tool to determine eligibility for a long-term-care home based on accommodation and physical home situation, care needs and so

forth. Where a person is at home and doesn't require the level of care of a nursing home, it would be my understanding that someone wouldn't be referred there. But the intermediate level of accommodation may, in fact, for that particular person, be the best choice.

You have to remember that we're dealing with insured services. Retirement homes are not insured services, so there is a difference in whether this would be a government-funded program. But there are criteria around access to each of these services and an assessment process to establish whether an individual person qualifies for placement.

**The Chair:** It just seems to me that, notwithstanding all of what you are saying, there is a tendency for the market to push them up to a level of service which may be excessive. I'm not saying that this is widespread, but even if it was 10%, that's a huge cost saving that we

could allocate somewhere else in terms of our health care system.

Are there any further questions that we might have?

Thank you very much. You'll be responding to us in writing on some of those matters.

**Mr. Sapsford:** Yes, there are a couple of follow-ups that we'll provide for you.

**The Chair:** Thank you very much. I may forward to you some specific questions after the clerk and the auditor have gotten together in order to try to focus on those.

Members of the committee, we'll grab a sandwich next door and then reconvene after our guests leave and just talk about any recommendations we might want to make to our researcher in preparing the report.

*The committee continued in closed session at 1121.*

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## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 12 May 2005

# Journal des débats (Hansard)

Jeudi 12 mai 2005

## Standing committee on public accounts

2005 Annual Report,  
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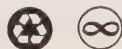
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COMPTES PUBLICS

Thursday 12 May 2005

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*The committee met at 0946 in committee room 1, following a closed session.*

2005 ANNUAL REPORT,  
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## MINISTRY OF THE ATTORNEY GENERAL

Consideration of section 3.01, Office of the Public Guardian and Trustee.

**The Chair (Mr. Norman W. Sterling):** Good morning. I'm sorry for the slight delay. We had a nice little closed-door session talking about some of the auditor's report.

Before we go to questions, I'd ask you, Mr. Segal, Deputy Attorney General, if you have opening remarks or if the trustee also has some opening remarks—however you want to share this. I invite you to introduce the people who are with you and then go ahead and make your introductory remarks.

**Mr. Murray Segal:** Thank you, Chair. It's a pleasure to be back.

With me, to my right, is Elizabeth Patterson, the assistant deputy minister of the family justice services division. To my left is Louise Stratford, the public guardian and trustee, and with her in the audience are two senior staff, Sharon Yetter and Laurie Redden.

I am pleased to have this opportunity to meet with you today, and I will take the opportunity to make some brief remarks to discuss the Provincial Auditor's report on the Office of the Public Guardian and Trustee and to present the ministry's response to the issues that it raised.

Again, I'd like to say that we're very pleased with the auditor's positive conclusions about the public guardian and trustee services—the PGT services—to incapable adults. We find it particularly satisfying that he reported an overall improvement in the systems and procedures used to provide services to incapable clients since the last audit in 1999. I noted that only two of the 11 issues cited in the 1999 report appeared in the 2004 report. We welcome and we accept all of his recommendations, and we're currently at work implementing every one of them. I'll say more on that in a moment.

At this point, I'd like to provide you with a brief overview of the roles and responsibilities of the OPGT. Essentially, the job of the public guardian and trustee, as you know, is to help people who are unable to make their own decisions about matters that affect their security and

their well-being. The office also serves a number of other functions, however, including administering estates for people who die without a will and without heirs in Ontario, investigating allegations of abuse against incapable adults, acting as the accountant of the Superior Court of Justice and safeguarding the public interest in charitable property.

Operating within the family justice services division of the Ministry of the Attorney General, the OPGT has about 330 staff operating in six locations throughout Ontario, with a budget of \$30.4 million to deliver 14 programs. In the guardianship area, our client representatives maintain an average caseload of about 140 clients. In addition to the client representatives, the office employs multidisciplinary teams of dedicated staff with varied experience in fields such as health care, social work and financial planning. These teams receive professional support from lawyers, accountants and investigators as required.

Often, because there is no one else, the OPGT must, of necessity, become involved in advocating on behalf of clients, facilitating services and alerting health authorities when they may be in crisis. For example, the office delivers a series of programs that go beyond property guardianship for mentally incapable adults who do not have family support. Its staff members may be required to make substitute decisions concerning medical treatment, long-term-care admission, litigation and personal affairs. In 2004, the OPGT made over 3,000 medical treatment decisions.

Turning to guardianship, our largest program by far is property guardianship. We currently serve more than 9,000 clients, most of whom suffer from mental illness, dementia, developmental disabilities or head injuries. Many have been victims of abuse or neglect. Some are transient and have behavioural problems, and in many cases, their finances are in a shambles. Although the majority receive social assistance or live in institutional settings, more than 44% live in the community, and OPGT works hard to keep them there, if at all possible.

OPGT staff members serve 9,000 mentally incapable clients, with assets of about \$380 million. Our people ensure that they receive the income and benefits they are entitled to, that their bills are paid, that their assets are properly managed and that their legal interests and personal needs are looked after. Each year, this involves making 7,000 applications for income and benefits; paying one million bills; locating, securing or managing

10,000 assets, including 500 real properties; instituting 2,000 legal actions to protect clients' legal interests; and ensuring that 10,000 tax filings are made.

In 2004, we greatly increased the number of home visits, compared to 1999, from about 4,500, representing about half of our client base, to about 6,900, representing all clients requiring or needing visits. In all cases, the office makes every reasonable effort to find relatives or other parties who are willing to become private guardians. It's recognized that, in most cases, the best solution for clients involves their families assuming some responsibility for their well-being. However, family members often refuse to become involved with clients who are in extreme personal, financial or legal distress. This means that many of the cases that fall into the OPGT are among those that are the most complex and difficult to manage.

Not only are OPGT staff handling increasing numbers of cases, but they are also serving clients with increasingly more complex and challenging personal circumstances. I've been extremely impressed with the commitment and professionalism that staff have shown in carrying out such fundamental duties as helping clients find a place to live, ensuring that they get medical help, and putting them in touch with community services.

This may mean making emergency arrangements to secure property while a client is in hospital, or rushing to assist a client who has just been evicted. It may mean arranging for delivery of food for a client who has neglected to feed himself for many days. It may mean calling an ambulance for a client who is experiencing symptoms of a serious medical problem but has no idea where to go and what to do.

OPGT staff members manage these types of difficulties on a daily basis, with sensitivity and understanding, and I would like to take this opportunity to publicly acknowledge their skill and commitment.

A few words about technology: To assist them in their work, we're investing in more and better resources to enhance the efficiency, management and monitoring of all program areas. This means, for example, improving our ability to conduct searches for heirs and distribute estate assets more quickly by enhancing staff capabilities and improving our system for tracking the status of files.

Our computerized logging and tracking system currently processes 12,000 benefits applications and income redirections for incapable clients on an annual basis. The office is also undertaking a large-scale information technology replacement program that will result in a more efficient and user-friendly system and even better client service.

A few words about estates: The office has improved its effectiveness in locating heirs on a timelier basis. In 2004, an additional estates analyst was hired, which will assist in further improving the timeliness of estate distribution. I'd also like to point out that while it is obviously important to distribute assets in a timely manner, beneficiaries never lose their right to an inheritance. A file can always be reopened, no matter how long it takes for the beneficiary to be identified.

In relation to accounts, I'd like to advise the committee that OPGT has reviewed all of the accounts belonging to former minors that are held with the accountant of the Superior Court of Justice. Over 96% of the assets identified as overdue in the 1999 audit have now been paid out. We have implemented a new tracking system for these accounts to monitor responses from beneficiaries, and we intend to continue aggressive follow-up of these accounts.

I now turn to the issue of vendors. With respect to the auditor's comments about OPGT's vendor relationships, we acknowledge that a request for a proposal was in fact posted for 14 days, rather than the 15 days set out in the Management Board policy. We have taken steps to ensure that any future RFPs posted on the MERX Web site will fully comply with this requirement.

We acknowledge the auditor's observation that we should have refused a fee adjustment by the firm that we selected to manage some of investment accounts. We accepted the change at the time because, although the bidder had made a mistake in its fee quotation, the new, adjusted fee was still below those of other competitors who had presented bids. In addition, since the original fee quoted was in error, it was also possible that it could not have been legally enforced. The adjusted fee was considered to be a reasonable resolution of the issue at the time it was accepted.

The auditor has also suggested that we take a more critical look at past performance in selecting investment managers. We will do so. OPGT will continue to have the assistance of members of its investment advisory committee to help in the selection and ongoing evaluation of its investment managers. However, I would point out to the committee that past performance is only one of the factors to be considered in selecting an investment manager. As the RRSP advertisements say, "Past performance is no guarantee of future performance."

Our first duty to our clients is preservation of their capital. This means that we must also look at a firm's investment philosophy and style, risk controls, succession planning, staff turnover, client services, experience and reputation. As every investor knows, high performance usually means accepting a higher level of investment risk. That is something that we, as trustee of other people's money, are very reluctant to do. Most of our vulnerable clients are not in a financial position to accept investment risk, and many of them rely on the income earned on investments to provide for monthly necessities. Preservation of capital is paramount.

Nevertheless, we agree with the auditor that suitable investment benchmarks should be used to measure the performance of our fund managers. We intend to regularly review and update those already in place and investigate others that may be appropriate.

Because of the unique nature of our responsibilities, some of the standard benchmarks are not appropriate for our application. That is why we are continuing to look for a suitable benchmark for our bond fund rather than simply use the Scotia Capital Universe Bond Index or

other standard measures. In addition, of course, we will closely monitor the current bond fund manager to ensure compliance with fund policies.

With respect to financial management, we would say that we agree with the auditor's observations that investment decisions for individual clients should be fully documented after the consultation and review process has been completed.

We're developing a plan to ensure regular reviews of our clients' portfolios and will act promptly on recommendations from financial planners.

We're also taking steps to improve the process for assessing the health status of our clients in developing and maintaining their financial plans. This includes use of a standardized health questionnaire that staff will complete based on input from the client's health care workers.

In the case of trusts for children, we will continue to work with parents or guardians to obtain information on their health and financial needs to assist us in creating and managing their financial plans.

I now turn to the issue of losses. In his report, the auditor noted that some of our clients' portfolios experienced substantial losses. While this is certainly true, I think it is only fair to point out that everyone working in the investment industry has been contending with highly volatile markets over the past four years or so. In our case, this volatility has meant that the extremely small number of our clients with private stock portfolios have experienced major swings between gains and losses. The office has added staff to help manage these assets more strategically in response to market fluctuations.

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On the topic of overweighting, in his report, the auditor also pointed out that the investment portfolios of 22 of our clients were overweighted in equities contrary to recommended investment guidelines. He also quite fairly pointed out that these guidelines are only rules of thumb. Investing is never an exact science. In these cases, a variety of criteria were used in making investment decisions, including: how much cash the client had; how much cash he or she was likely to need in the short term; and how high a level of financial security was required over the longer term. Because of their strong cash positions, all of these 22 clients were considered to be good candidates for long-term investments with a substantial weighting in equities, the idea being that satisfactory growth would be achieved, with the effect of market volatility being smoothed out over time. Unfortunately, each of the clients passed away unexpectedly and was unable to benefit personally from this longer-term strategy.

At this point, I'd also like to deal with the client mentioned in the auditor's report whom the media has claimed lost millions as a result of our management of his portfolio. In fact, the client did not lose money; he gained an average of about 4% on his portfolio during the time we managed it. What happened was that this client came to the OPGT with investments in the stock of a

well-established, Canadian-based high-tech corporation with a long history of success in global markets. However, during the period covered by the auditor's review, this company, like many major corporations in the telecommunications sector, experienced a high degree of volatility in the equity markets. In other words, its share price went through huge rises and falls before settling down in a price range far below its peak. During this period, experts disagreed on whether the stock was a buy or sell proposition. At its peak, the stock assumed an enormous percentage value of the client's portfolio and represented, on paper at least, a tremendous gain. When the stock collapsed to virtually penny-stock status, of course, the loss—again, on paper—was also tremendous. While it would obviously have been better to sell off the stock at or near its peak, I believe any financial planner will tell you that attempting to pick the peaks and valleys of any given stock's pricing is a sure route to difficulty.

The fact is, the client did not suffer the financial disaster that one would assume from reading the media reports. He came to us with over \$900,000 in cash and investments. When this client left our jurisdiction eight years later, after payment of all his living expenses during that time, he had almost \$1.3 million. Over a lengthy period that included considerable upheaval in the markets, his portfolio achieved a positive return overall. There are many long-term investors who would be delighted to be able to make the same claim.

With respect to charitable organizations, the Provincial Auditor noted in his report that the OPGT did not follow up after sending letters in September 2003 to about 350 former Ontario charities that had been deregistered by the Canada Revenue Agency. As part of this special project, the office asked for the reasons for the revocation and what steps they were taking to wind up their operations. Fewer than 50 bothered to reply, and the OPGT took no further action at that time.

The Provincial Auditor has recommended that the OPGT review Canada Revenue Agency's reasons for deregistering charities on a timely basis and follow up in cases presenting a higher risk that charitable donations might be misused or misappropriated.

In December of last year, the Charities Directorate of the Canada Revenue Agency agreed to provide the office with information on charities that had been deregistered for cause. This information will help OPGT to implement the auditor's recommendation in an efficient manner.

Mr. Chair and members of the committee, that would be my report. As I've suggested, we're very grateful for the auditor's recommendations and pleased to note the progress that has been made with respect to his earlier report.

We have a number of extremely dedicated and professional people working in the Office of the Public Guardian and Trustee, helping and protecting those who may not be able to manage their own affairs. I'll take this opportunity to thank them for their great work on behalf of all Ontarians in ensuring that we continue to live in a compassionate, caring social environment in this province.

**The Chair:** Thank you very much. Ms. Stratford, did you want to say anything? OK. Do we have questions?

**Ms. Shelley Martel (Nickel Belt):** Thank you for being here today, the three of you. Let me begin with—maybe we'll call him Mr. X. I'm not sure how best to describe him, because we don't want to give anyone's name. I'm looking at the auditor's report on page 48, with respect to an elderly client whose stockholding was worth over \$3 million. I'm assuming we're talking about the same client who was reported in the media as losing a significant amount of money. I don't know if I need confirmation from the auditor's office that we're talking about one and the same person.

*Interjection.*

**Ms. Martel:** OK. What I'm concerned with is that I see that the auditor's office says, "We noted that the recommendation of the financial planner to sell at least 75% of this stockholding was never implemented. As well, in August 2000, the office invested an additional \$400,000 of the client's remaining cash in the diversified fund." That paragraph ends by saying that the total stockholding's market value had fallen from its August 2000 value by over 80%. As I read what the auditor had to say, I see problems in that the financial planner's advice was not followed by, I'm assuming, staff at the office, and as I read this, it seems that the client lost a significant amount of money. How do we square what the auditor has written down with what I just heard from you, Deputy?

**Mr. Segal:** I'm going to ask Louise Stratford to respond.

**Ms. Louise Stratford:** The recommendation that was made by the financial planner was not acted on in a timely way. With hindsight, it's easy to see now that the timing on the sale of that stock was very important. However, there was really no way at the time to realize the significant and dramatic increase and drop in value that that stock would bring. In hindsight, it's obvious there was a time to sell that stock, but at the time it simply wasn't appreciated and the recommendation was not followed in a timely way. Now we know, with hindsight, what that time would have been.

**Ms. Martel:** So when a financial planner makes a recommendation to sell, who does that? Do you just decide to hold on that for a while? If that's their job, and I assume it is, to look at the markets and make decisions about when it's a good time to get rid of things, if their advice is not followed, what do people do from there?

**Ms. Stratford:** As I say, it was difficult, with that stock, to actually know what the perfect time to sell was. The planner had been noting that there were a number of equities in that client's portfolio, and was recommending that the number of equities be reduced. The recommendation was not specific to the planner noting that there had been a rise in price; it was based on the number of equities that were in the file and what would have been appropriate for that client. As I say, with hindsight, it's clear that there should have been a sale at that time in

order to optimize the value and the potential in that stock, but it didn't take place.

Generally speaking, though, recommendations from financial planners are carefully considered by the client representatives who make the decision. There is discussion between them about what ought to be done. Some times things are more clear than at other times. Every individual client's circumstances have to be carefully considered before the decision is ultimately made.

**Ms. Martel:** Can I ask one further question? Not only was it not sold in a timely fashion—it didn't seem that it was sold at all—the office then, in August 2000, invested an additional \$400,000 of the client's remaining cash in a diversified fund. So there was one huge, gross error, and then it was—from my perspective; you're going to correct me if I'm wrong—reinforced by an additional investment of money for that client that probably shouldn't have been invested in the diversified fund either. Is that correct?

**Ms. Stratford:** Once you consider the loss in the particular stock that the client brought with them, and then you add to it the fact that the equities fund that the client was placed into also contained some of that stock, then yes: Overall, that did not yield a good result for that client. I point out, though, that a diversified fund is 60% equities but 40% fixed income. It's not a strict equities fund.

**Ms. Martel:** Can I ask the auditor, then: You've heard what the discussion has been. Where was our client left at the end of the day?

**Mr. Jim McCarter:** We can't go in with a crystal ball and say, "You should have sold at the very high." Our concern was the need to diversify assets. Clearly, in this case and in other cases that we noted, there wasn't enough diversification.

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Our recommendation was essentially that you need to be on top of this. If you have a situation like this where you've got a significant portion of one stock, it's just a matter of diversifying. We're not coming in, to be honest—we made the comment that you also have to watch the equity-fixed income mix. Again, our concern was the financial planner, which was good. The financial planner had a look at this and said, "This is wrong. You should be liquidating this stock, you should be reducing the exposure." It wasn't done. We did notice this in other situations too. Essentially, we were saying that you need to be on top of this, you need to be more closely monitoring this.

**Ms. Martel:** Do you have any sense that the checks and balances are in place? You said that this wasn't the only individual case where a financial planner had said, "Do something." There were other clients where that same thing happened. Do we know how much money might have been at stake with respect to those clients?

**Mr. McCarter:** Yes. I think that at this time we haven't gone back to see whether the checks and balances are in place. I think, as I discussed in the in camera meeting, we certainly got the impression in discussions

with the deputy and the PG and T that they were concerned about this and they would be taking action to rectify it. I can't say whether or not the appropriate actions have been taken until we go in and do our follow-up, which would be a year from now.

**Ms. Martel:** Can I ask what the checks and balances are, then, to respond to the auditor's concerns when a financial planner makes a recommendation? Who is ensuring that that gets carried out in a timely fashion—that it actually gets carried out, and in a timely fashion?

**Ms. Stratford:** We have in place a number of procedures and policies in this regard. They require that the financial planner fill out a financial plan, a formal document, offer that to the client services representative, the substitute decision-maker on file. The team leader of that client services representative also comes into the loop. If the recommendation is not going to be followed, the team leader has to take that up with the manager for the financial planner. So there will be a great deal of scrutiny in any case where a recommendation is not about to be acted upon. Otherwise, it will be acted upon, and there is a department within the office that now takes charge of the financial plan and makes sure that recommendations that have been endorsed are actually followed up. I'm very confident that we now have in place very, very clear policies and procedures that will make sure those recommendations are dealt with appropriately.

**Ms. Martel:** Is that new since the auditor's report was released?

**Ms. Stratford:** It was there when the auditor did his review, and during the time of those files, but it was not as clearly monitored as it is now. We did not have the oversight at the more senior levels. The diversified fund was a new fund for our office back in 2000. The files that the auditor reviewed were all files that were generated in the early portion of that file's creation. Since then, we've had an opportunity to tighten up those procedures and for them to become much better known among the staff.

**Ms. Martel:** Can I ask some questions about the error? Deputy, later you say that the fee that was quoted by the firm that was selected was in error. I don't want to paraphrase, but I gather that you talked about some form of a legal challenge if you didn't recognize that it was an error. I look at the auditor's report, which says very clearly that the firm that was selected had been given an opportunity by the office to resubmit a bid with respect to its fees and that the selected vendor did not change its fee structure before it was chosen by the office. I don't see how you can describe this as an error when the firm that was selected had an opportunity, a second opportunity, to actually change their mind and didn't.

**Ms. Stratford:** Clearly, that firm made an error, had an opportunity to fix it, didn't, and discovered it after. It's highly regrettable that all of that took place. However, at the end of the day, when the firm did discover the error, they came to us about it. They knew that they had made this mistake and that they'd had an opportunity to fix it, but hadn't done so, and put us, obviously, in an awkward position. But we decided that there was a slight

chance, from a legal point of view, that if we tried to compel performance, we might have had some difficulty from them. But moreover, their bid was still the lowest. Ultimately, we would have chosen them anyway.

**Ms. Martel:** OK. Let me look at what the auditor said. I don't pretend to be an expert on this, so they're going to help me if I get this wrong; they took a look at that as well. I'm reading from page 42 of the auditor's report, where it says that after subtracting the higher fee difference of 2.8 basis points from the top 20—that paragraph, Auditor—you still said that the second-choice candidate would have yielded an additional return of over \$500,000 per year to the office's clients. Am I reading that correctly? Are you saying that if the second choice, which was essentially the incumbent firm, had been selected, even with the higher fee, the choice of them would have resulted in additional funds?

**Mr. McCarter:** What we were saying is that the track record of the number two candidate—they basically earned more on the money market investments. So we pointed that out. We also pointed out the fact that the primary criterion used by the PG and T was, "What fee are you going to charge us to do this?" I kind of had two issues: Take the performance into consideration, but probably more critical to us was the fact that you said it's going to be based on the lowest fee.

They came in and quoted 2.2. The PG and T kind of looked at this. That's a very low fee. I mean, that's a very competitive fee, 2.2 basis points. PG and T went back to the two candidates and said, "Can you please confirm to us that this is the fee that you're going to be charging?" The two candidates came back and said, "Yes, we're sticking to our 5.0," and "Yes, we're sticking to our 2.2." Then the PG and T said, "Fine. This is our primary criterion. You get the business. That's a very competitive fee quote."

Subsequently, the firm came back and said, "Oops. We goofed. We should have quoted a higher fee. This is our new fee." The concern we had is, they signed a contract, and they said, "OK. Let's compromise and we'll sort of split the difference." We raised that as being questionable.

**Ms. Martel:** I guess I don't understand how a legitimate firm that's doing significant business can make a mistake like that. It's just beyond me that someone can make a mistake like that after they have been asked by your office if that is clearly their fee. I have a real problem with that.

**Mr. Segal:** I can explain the ministry's position. It's hard for me to explain the private sector's position, but I understand absolutely what you're saying. In my remarks, I tried to convey that we've learned from that and that we acknowledge the auditor's point of view and criticism.

**Ms. Martel:** OK. I guess what I have a concern with is your deputy—and I appreciate your accepting some responsibility for this. It would be hard to describe this as an error, which is what you did in your remarks. I'm sorry. These guys had every opportunity. I don't know what the game was here with them.

**Mr. Segal:** I'm not sure there was a game. Again, it would be unfair for me to ascribe motive or intention etc. on the part of an entity in the private sector. I've taken responsibility for our part, clearly and repeatedly on this, and with the benefit of hindsight, maybe we should have done better. I acknowledge that. I don't know what else I can say in that respect.

The tracking that the auditor is doing with respect to the second-place company is speculative. In other words, if this had happened and that had happened, maybe it would have been a half-million-dollar something or other. I'm just taking responsibility. I'm telling you that at the time, there was a concern with respect to the possibility of legal liability. If we had to do it all over again, maybe we would have just stuck to our guns, and I take that responsibility. I take your point.

**Ms. Martel:** They're still there. How long are they there, managing the second fund? I have some questions about the first fund, but I'll leave the rotation here. Can I ask how long this firm has got a contract for to manage the fixed income fund?

**Ms. Stratford:** The contract is basically dependent on termination by us at any time, depending on their performance. So, as a matter of fact, this year we're evaluating performance, and this will be a year when we determine whether to tender that contract again.

**Ms. Martel:** So there are no requirements to tender either the contract for the fixed income fund manager or the investment management firms? There's nothing in legislation or in policy at the office that every five years, every six years, you go to tender to see if you can get a better deal?

*Interjection.*

**Ms. Martel:** I think she's saying that for the investment manager, there's some kind of rule about that now, although it didn't seem that that rule was in place for that tender either.

**Ms. Stratford:** Yes, it's standard to have an open end so that you can terminate at any time.

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**Ms. Martel:** You have some policy in the office about that?

**Ms. Stratford:** We do. We review performance by the managers on a regular basis. We have quarterly meetings with our investment advisory committee. We meet with the managers and with our consultant, who also gives us advice on this, review their performance and decide if it's satisfactory. If it isn't, we'll go out to tender for a new manager.

**Ms. Martel:** Do you guys have questions, or can I—OK, let me stop there.

**The Chair:** Mr. Patten is next.

**Mr. Richard Patten (Ottawa Centre):** Thank you for being with us today. I empathize with you, having gone through this experience. I might suggest there are other areas in the government where somehow performance on investments isn't maximized, but I'll tell you later where they are.

One thing I wanted to ask was that, managing investments, of course, I recognize is not easy. It's probably

more difficult in government because of the constraints of legislation and the requirements from Management Board and things of that nature. When you want to maximize your decision-making, that requires timely responses. I would like to get a better appreciation of how that relationship works. I don't have a big portfolio myself, but I have a broker and I play around with a little bit of money. My broker will call and say, "Listen, I've got an idea for you. My suggestion is this and this." I make the decision there. Do I want to do anything? But I've got the information and I can act. That's not the case, I would suspect, in your situation. Could you tell me the staff office's relationship when information is put in? How long does that take, because if you're dealing with equities, as you can appreciate—

**Ms. Stratford:** I should first of all say, just to put it in perspective, that it's a very small number of our clients who actually bring these private investments with them. They're the ones we really have to be careful with. Our own fund has firm management, is overseen every single day and there aren't these kinds of decisions to be made. It's really only about 8% of our clients who bring these private portfolios with them. Historically, they bring the type of investment that's really the blue-chip stock you don't have to worry too much about. It was only back in 2000 when we first had experience with a volatile stock and had to make those kinds of fast decisions. Having said that, and having had that experience, we certainly are mindful of the need to have timely decisions in that area.

When we get a new client, the first step we do is bring out all the assets, which can take some time, because many of our clients—they come to us completely unknown to us, of course—may have been on a bit of a downward slide for many years, particularly our elderly clients who don't have family to look out for them, who have been in the community and who probably have been very gainfully employed, earning money and accumulating assets, and then they begin to suffer from dementia. In fact, 60% of our clients are over the age of 60, and a good number of them fall into that category. They've accumulated some wealth, they've started to feel the effects of dementia and they don't have family looking out for them. By the time they get to us, things can be in a pretty severe state of disarray. So our first order of business is to try and find out where their money is. This can involve going to their house or apartment, searching around for bank books, letters, any kind of evidence we can find, contacting neighbours and looking for family.

Eventually we find whatever we can and bring all those assets in. If we locate some private stockholdings, we immediately bring those in and transfer the file to the financial planner, who will sit down and do a financial plan for that client, assuming the assets are of appreciable value. Obviously, if there's just very little, it's not as serious a concern, but where the client has investments of \$10,000 or more, we do an immediate review of the file. The financial planner surveys the holdings and does

some research, and then we will make recommendations to the client services representative who makes decisions for that client. That representative will then implement the recommendations, say yes or no, and the planner will then forward the plan to our department, which actually effects the transaction. All of that should be happening in a very timely way when there are assets of appreciable value that are subject to that kind of volatility.

As I say, we've spent a lot of time in the past couple of years really tightening up those procedures, providing education to staff and making sure everyone is well aware of the need for timely action in those cases.

**Mr. Patten:** When you say "timely," what's the time frame for that: two days, a week, two weeks?

**Ms. Stratford:** By the time we've got all the assets in, it can take a few months before we actually know the picture. Within the first six months of having a client, we should have everything in and that financial plan made and those decisions implemented.

**Mr. Patten:** I think that's part of the difficulty of the situation. If it's going to take a few months, especially when you are dealing with portfolios that are high in equities—market stocks—the response time has to be much shorter than that. In fact, over a two-month period of time, a considerable change might occur. Therefore, my suggestion is to look at the timing of these things. Do you have a response to that?

**Mr. Segal:** Mr. Patten, you raise an interesting point. There are two distinct time periods. As Ms. Stratford indicated, one is the time necessary to get the picture, to find the actual assets, because the person may not have things in order like we would, for example.

As soon as that is known, then the next question of timing is, how does that compare with, for example—I'm not someone who has a portfolio—getting calls from a broker or having an exchange with a broker about buys and sells. The main distinction is that this particular population requires a more conservative approach. Indeed, that's one of the lessons regarding putting all of one's eggs in one basket. So there is a more conservative approach taken, also bearing in mind the particular needs of the client. Do they need a very predictable and fixed income? Those kinds of questions. There is an issue of timeliness, but at the same time, there is an inherent conservatism in terms of the approach of these vulnerable people, and not wanting to take too many risks.

**Mr. Patten:** I have some other questions, but I want to share my time with my colleagues.

**Mrs. Liz Sandals (Guelph-Wellington):** Perhaps I can follow along the stream we were on. I understand what you're saying about it may take six months or whatever to work through the mess of paper that's accumulated and try and figure out what's there and what's owned. I understand how frustrating that process must be, trying to figure out what you've got.

But the auditor also made some comments around the issue of whether there should be high-risk investments in the portfolio of a person who is older, and that there were these instances of elderly patients who, even if they had

come to you with that mix—what happens with the portfolio to ensure that what would be presumably a bad mix for an elderly patient, however it got to be that way—what do you do now to make sure you don't carry on with this situation, which the auditor has identified, of having elderly patients with a portfolio that is much too high-risk?

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**Mr. Segal:** I'll just lead off and then turn it over to the public guardian and trustee.

I don't mean this is a criticism at all—I should say that really there's no frustration in this line of work at all; it's actually one of the more rewarding types of work. I remember, as a new deputy whose background was in criminal law, that I was quite taken at the very important public-minded and public-spirited work people do and the dedication they bring. Most of these people don't have a lot of money—it's a very small amount of money—and it's all about delivering services and making sure there's good-quality care. A lot of attention has been paid, and understandably so, to a couple of clients, one in particular who had an extremely large amount of money but absolutely no supports in the community, no family etc., and we have to do a better job.

The general point, as Ms. Stratford said, is that an assessment is made of the small percentage of people who come in with something to ensure that if there is the potential for volatility in having too much concentration, as we've learned from the one example I referred to earlier, there is a sort of appropriate blending as quickly as possible so that there is an inherent conservatism. The assets are mixed in a way that provides a maximum and steady return, matching the needs, the profile, the age and the health of the client, and the size of their holdings and the like.

**Mrs. Sandals:** Is that a change in policy? Because if that was the policy that was in place at the time when Mr. X—I understand what you're saying, that most of these folks don't have large assets, but having a lot of assets doesn't protect you from dementia and old age, so you're going to continue to get some clients who have lots of assets. Is that a change of policy from the time when Mr. X first came to you, where you did maintain a portfolio that had some volatile, high-risk assets? Given that experience, is that a change in policy?

**Mr. Segal:** I'll just say that we're very much more tuned in to this issue. There are very few who have that kind of holding, but that's not an excuse. We learned something out of it. I rather think there probably were tens of thousands of Canadians who had the same experience with that stock, a very unfortunate stock, wondering, "Should I buy? Should I sell? Should I short?" I'm going to betray my ignorance: sell, short, whatever.

**Mrs. Sandals:** Just so you don't misunderstand me, my issue here isn't that particular stock—should you have sold, shorted or whatever—it's if somebody comes to you now, having had this experience, and they've got a portfolio that's potentially volatile. What are you going to do about it?

**Mr. Segal:** Louise?

**Ms. Stratford:** We now conduct a very thorough review, as we did then, but now with much more timeliness built in, in terms of the oversight. Instead of just the planner and the client representative, we have the managers of those two areas getting involved, if the planner's recommendations are not going to be implemented if the client rep is not sure about them. So we have more oversight. But we've also changed our policies in terms of the age of people, when we're looking at asset allocation, which is to say, how much of their money to have in stocks, how much to have in fixed income. At that time, we were considering that you could still be in stocks even if you were over 75. We've changed our policy now, and if someone is 75 or older, we don't invest them in equities, and if they're already in when they come to us, we find a suitable time to get them out. Now that may not be right away. Obviously we're not going to sell a stock that's performing well and have the client experience a capital loss. We'll have to watch that portfolio very carefully. But certainly we have changed our approach somewhat on that with respect to elderly people.

**Mrs. Sandals:** OK, good. I think that element of moving high-risk portfolios to lower-risk portfolios as people age—you have changed the policy somewhat there. Thank you.

**The Chair:** I was asking the auditor, when Ms. Martel was talking about the 2.2 to 4.5 basis points, what kind of money this entailed in terms of the overall operations or what fee was paid. I think he's done a sort of back-of-an-envelope estimate here, but maybe it's important, too, to put the perspective. Basically, if it was 2.2 on \$300 million, which was the amount, they would have gotten something like \$75,000 in fees, and instead they got something like \$150,000. That doesn't take away from the real question of why it was done, but I think that amount of money is relatively small in relation to the \$300 million they were carrying forward. The more troubling part of the choice was whether or not they were good performers in terms of earning all they could have with that \$300 million.

**Mr. Segal:** Thank you for that clarification, Mr. Chair.

If memory serves me, the contract had not been signed at the time this arose. As I said, maybe we would have done it differently.

The auditor today used the expression, "The figure of 2.2 was highly competitive," and Ms. Martel noted that that may perhaps—described it as an error. "Highly competitive" might err on the other side. Sometimes one has to ask, "Are you sure you're right?" Maybe we asked too many times here, because it was somewhat off. But I appreciated the clarification in terms of the amount of money. Next time we'll be more rapid in accepting these competitive bids.

**The Chair:** Do you have any questions, Mrs. Munro?

**Mrs. Julia Munro (York North):** Yes, and I do apologize for having stepped out; I hope my question isn't redundant. Obviously, when you're looking at the

overall issue of what you do, you have this legal responsibility for the most frail and potentially disfranchised people, in the sense that no one else is there to act on their behalf. So it seems to me that oversight is of absolute, paramount importance in what you do.

I appreciated the changes you have made from 1999. As a matter of fact, I was a member of this committee then and recall quite vividly some of the issues that were raised and certainly appreciate your comments and the fact that the auditor also found that much had happened in a positive way since then.

My question is with regard to a mechanism for reviewing the kinds of things that you undertake on the financial side. Obviously, much has been made of the questions of investments and matching them to the age of people and things like that. When you think about it as an individual, any of us who has anyone performing that function for us expects that we're going to call them pretty frequently, or at least monitor or take a very active role in the decisions that are made. Obviously, you play that role for these people. My question, then, is, what are the steps that would give the people who are making the financial decisions concern about your phone call—of your review of any kind of oversight that you're going to provide them?

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**Mr. Segal:** I'll ask Ms. Stratford to review some of the steps that have been put in place in the last number of years, many of which have been commented on in a positive way by the auditor.

Before I do that, I just want to underscore the fact that while the focus of these questions is very understandably on the financial management, this is actually about full-scale and compassionate management. There's a multi-disciplinary team of people. The financial part is one part, an important part, because without protected finances, that might challenge, in terms of the rest of the assistance. But the women and men at the PGT spend a huge amount of time dealing with the range of needs, financial being one of those issues.

We certainly have put in steps to improve, but at the same time, as I've tried to indicate, there is frequent contact and attentive, compassionate staff who are dealing with every little need, including stuff that most of us would never, ever think of as a challenge. The commitment to customer service and people support is remarkable and keeps on improving.

So I'll turn to Ms. Stratford to just underscore some of the financial improvements made, but I wanted to stress that this is a daily thing, with phone calls on every issue, including imagined problems, imagined ills. All I can say is it's quite remarkable to see the kinds of support. It's one of the more rewarding types of assistance, with the financial part being one aspect of that.

**Ms. Stratford:** I'll just speak directly to the issue of financial monitoring. As I mentioned earlier, it has only been since the changes in the Trustee Act in 1999 that the office has had the jurisdiction to look at clients' investments, from the point of view of what a prudent investor

would do, as opposed to just investing clients in a very safe set of fixed-return investments. Since that time, we've been engaging in ongoing, continuing education with our staff to make sure that they understand what that really means, bearing in mind of course that, as everyone knows, and as the deputy said earlier, investing is not an exact science. It's very hard to really know exactly what to do. You can only go on the best advice that you can get.

Our staff certainly understand that we have experts on staff in the form of financial planners. We have six financial planners who have their CFP designations. Most of them are also chartered accountants; some have M.B.A.s. They have a great deal of expertise in the area. We also have access to external resources, in the form of our external brokers, who keep us informed on industry alerts and that kind of thing that would assist in analyzing particular stockholdings.

We also have an investment advisory consultant, a firm that we hire to provide advice on the performance of our funds and the performance of the market in general so that our financial planners can be informed as to what kind of advice they ought to be giving.

We have an investment advisory committee, composed of private sector members with great degrees of expertise in investments and in law and the financial sector, who meet with us quarterly or as often as we need—it's usually more than that that we get together—to discuss the big picture. They help us filter the information that we get from our fund managers when they come in to report on how our portfolios have been doing.

So we have a great deal of expertise being brought to bear, we have continuing education for the front-line staff and we have much enhanced and tighter internal procedures for people to follow. We have particular forms to be filled out, signed off and left in the file as evidence that certain recommendations were made and decisions were taken. We have very clear accountabilities for staff, including supervisory oversight of this area where we have clients who need that kind of attention, those few clients who do have those kinds of sophisticated investments.

**Mrs. Munro:** If I may just have a final comment, I have to certainly recognize the kind of work on the human side, as I know of at least one constituent for whom your office does perform the kind of tasks that you have identified, and how important it is to be able to have that kind of opportunity for individuals. As I say, in my own riding I'm aware of that. So thank you.

**The Chair:** I'll just ask one question: In terms of your relationship with the Ombudsman of Ontario, do you have many requests from the Ombudsman?

**Ms. Stratford:** We get inquiries from the Ombudsman's office. There are very few complaints that actually, in the end, are acted upon and recommendations are made on. I can only think of one or two over the course of my six years as public guardian that actually resulted in recommendations.

**The Chair:** That sort of leads to this next question: Who advocates on behalf of these people?

**Ms. Stratford:** We have about 9,000 adult clients. As I said earlier, many of them are elderly. Of the elderly group, there are about 20% of them who are over 80 and they really are suffering from dementia. The others, though, although they may need our help in managing their finances, are by no means incapable of speaking up for themselves. Many of them are certainly capable of doing that, and they know how to do it. So there are many complaints to the Ombudsman from clients, frankly, who think that perhaps we should be giving them money more regularly, wondering where there money is, that kind of thing. But when the Ombudsman inquires into them, we have not found that there have been any kinds of concerns that the Ombudsman has had, other than those one or two cases, in terms of how we've managed the file.

I take your point, obviously. These people are incapable of managing money and, therefore, you might assume that they're incapable of advocating for themselves. Certainly I don't suggest that they're all perfectly fine in that regard. There are agencies—the Advocacy Centre for the Elderly has represented some of our clients in disputes that they've had. Some have gone to their MPPs, and we've certainly heard from them about concerns of their clients. Many of them have social workers who can bring forward their concerns. So we do hear from people, and I feel that most of them are aware, if they have a concern, of what to do about it.

**The Chair:** I guess my concern would always be that this person was basically not represented or nobody really cared about the individual, and to recognize whether or not her or his needs were being cared for—how does that rise to the top? Are there any other public trustees who have what I would call an internal advocate or an ombudsman kind of advocate that goes around and looks at individual files just to sort of bring it from the bottom up?

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**Ms. Stratford:** I don't know of any other jurisdictions that have an actual, formal ombudsman. Certainly, there are internal auditors, and we have them as well, who review files and go through the transactions and make sure that the policies are being followed in the office, and whether or not they bring them to the attention of the staff and those items are looked into. I believe the auditors can confirm that we do have that function, and it is quite a rigorous one in our office.

**Ms. Martel:** I want to return to the matter of the managers of your funds, because I asked that question about whether they're contracts, and you have said that the contracts both for the diversified funds and to manage the fixed-income fund are open-ended. I'd be curious to know what criteria the office has in place to determine if their performance is satisfactory, which would lead to that manager continuing in place, and what the criteria would be to decide to go to an RFP to have a new manager.

**Ms. Stratford:** Every fund has a number of benchmarks that are set in order to monitor the performance of

that fund, and thereby the manager. Every quarter we get a report from the management firms. Our consultant filters those reports for us. We look at them as well. The consultant will analyze those returns and compare them to the benchmark. We get reports from all of them in terms of how they have done. If we find that they are underperforming, not meeting that benchmark for a period of time, then we would begin to have serious concerns about them, and we would think it would probably be time to go out to have a look for new managers.

**Ms. Martel:** You have a manager, if I read this right, for the diversified fund, because there are two managers. Your top choice is the choice that the auditor said would probably have ranked 13th out of 15 in terms of past performance. Over the last three and a half years, the top-choice manager's return has been \$10 million lower than the return that was earned by the second-choice manager. That appears to be over a three and a half year period, so you have now had some experience with a top-choice manager: a return of 7.1% for the second choice, and the top-choice manager at only 1.7%.

Now, it says that both of the firms are meeting benchmarks—I'm assuming those are the office's benchmarks—but the fact of the matter is, one is seriously outperforming the other. The one that is not performing well, which is the top choice, was also the one that the auditor said, if you ranked on past performance, would have been 13th out of the 15 candidates that came forward. At what point do you decide that that is not very good performance and that maybe some in those other 15 could have been doing a better job?

I remain very concerned about the choice that was initially made, from what I have read in terms of the auditor looking at the past performance of the office's first choice. I remain even more concerned when I see that that individual is consistently outperformed by another firm and maybe could be outperformed by some of the other firms who came forward for the RFP but were not successful.

**Ms. Stratford:** As the auditor acknowledges, past performance is one indicator of a firm's performance, but there are other criteria that you would look at before you would select a fund manager—things like the investment philosophy, the style, the succession planning at the firm, the firm's reputation, the client service record, the experience and so on. The firms that we looked at were all pretty good performers. Relative to each other, some may have done better than others, but they were all good performers.

The firm that we chose as our first choice ranked particularly well in those other areas. There is a firm called Greenwich that does evaluations of fund managers. They do a survey of fund managers every year, and they report to financial institutions and other kinds of bodies on their findings. The firm that we chose as our top choice was in their top list of leading fund managers. They had ranked very highly on a number of criteria. To categorize that firm as a poor choice, I think, is really unfair to them. Relative to the other players in the

industry, they perform well. Now over the course of those 10 years, on an annualized basis, it's true that they did not do as well as some of the other firms, but as I say, they still did well relative to the market, and that is really the test. On the other criteria, they did very well.

Since that time, it's true they have not performed as well as the second-choice firm, but again, you can't look at that in isolation. These firms have different investment styles, and we purposely chose two firms with different styles on the thinking that, depending on what market conditions were, one firm probably would do better than the other.

The firm with the style that was more conservative would do better where the stock market was not performing particularly well, and vice versa. Frankly, that's what we've seen borne out, because our top-choice firm is a more aggressive, growth-oriented firm, and you would expect to see them do better in years where the market was performing better. In fact, that has been the case.

Unfortunately, since 2000, the market has not been performing well overall. So when you add up the years of performance, the second-choice manager, which has a more conservative style and keeps more money in the safer longer-term investments, has done better.

**Ms. Martel:** I'm concerned, though, about the office's top choice in relation to the firms that were not selected, and whether now it's an appropriate time to look at the other firms that were not successful.

I've heard you say—and I've read through the documents—that past investment performance wasn't the only thing you looked at, except the first choice, I would have to say, did not do well at all, frankly, with respect to past performance. The auditor says the top-choice candidate had the lowest annualized investment performance of all 15 short-listed candidates. It was also consistently underperforming in relation to benchmarks for global equity market. It had only outperformed the TSE 300 Index once in the 10-year period beforehand on an annualized return basis. Also, because it's the same firm that was selected to be the fixed-income fund manager, the top choice there, again, the same candidate, was the lowest of the three candidates in that RFP in seven of the previous 10 years.

I'm looking at the choice and—we're going to disagree on this—I don't think it was a good choice. I think that three years later, when you look at their performance in relation to the second-choice manager, that has been borne out. The auditor also expressed concerns about how the same manager was performing with respect to the money markets. His comments weren't terribly complimentary either. At what point do you say, "We better take another look at this"? I say that especially because this firm essentially has a monopoly now over your funds. I assume they still have half of the diversified fund, which would be \$50 million of the \$100 million, and they also are entirely managing the other portfolio of—what?—about \$800 million. I mean, they essentially have a monopoly. At what point—no? Well, they run both sets of funds, right?

**Ms. Stratford:** They run the money market fund and half of the diversified fund, but the bond fund is with the third manager, and the bond fund is actually the largest fund, in excess of \$500 million.

**Ms. Martel:** So it's not the same manager that has the bond fund?

**Ms. Stratford:** No.

**Ms. Martel:** My apologies. I thought there were only two sets of RFPs here that we were talking about. Is there a third RFP for the bond fund?

**Ms. Stratford:** That's right, yes.

**Ms. Martel:** There were no concerns about that? I don't think it was referenced at all in this.

**Mr. Andrew Cheung:** There was no open tender.

**Ms. Martel:** There was no open tender for \$500 million?

**Mr. Rudolph Chiu:** Our concern on that one was that—just the invitation of the three existing managers that had performed for OPGT before. So it's not extended to the other.

**Mr. David Zimmer (Willowdale):** Sorry, I'm not hearing.

**Mr. McCarter:** We didn't comment on the report on the bond fund, just on the diversified equity fund and the money market fund. That's where our primary concerns were.

**Ms. Martel:** OK. So if you have a portfolio of \$1 billion, \$500 million is to a company that is not referenced in your report one way or the other, and the top choice of the office is looking after \$300 million in one fund and \$50 million in others—so about \$350 million that it's managing, in some way, shape or form, out of \$1 billion?

**Mr. Zimmer:** I thought that you mentioned you had no comment one way or the other; I thought you had no concerns with that.

**Mr. Cheung:** Our comment was that there was no open tender; it was invitation-dependent. The entire fixed income fund was \$800 million, and our comment with respect to the whole thing was that it was by invitation, whereas our particular concern with the money market fund was the way the contract was awarded.

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**Mr. McCarter:** The issue with the fixed income fund was that under Management Board guidelines, we felt there should have been an open tender or, if not, then the deputy minister should have signed off. We saw no evidence of that. That was our primary concern there, as opposed to when we looked at the tender process and how the selection process went. We didn't really have any comments there, unlike the comments that we did have on the equities fund and the money market fund. It was more an issue of, did they follow the rules with respect to an open, competitive tender?

**Ms. Stratford:** If I could speak to the money market fund, which is the \$500 million-plus fund, the performance of the manager since the manager was selected has been very good. The manager has beat the benchmark. The auditor's comments in terms of performance there were again just on past performance. The auditor has not

suggested that the current performance is deficient relative to the other managers we could have chosen. The auditor is saying, "Based on past performance, perhaps you should have chosen the higher performer." But the difference in performance for those past 10 years was really small. The investment consultant we hired to help us with the selection process said that basically it was insignificant, and therefore you would turn your attention to other criteria to make your decision. In that case, the other criteria were mainly fees, which, even after the adjustment, were still better than the other manager was offering.

**Ms. Martel:** But the fee was attached to the selection of the diversified fund, right? No, it's the other way around.

**Ms. Stratford:** The money market fund was the fee issue.

**Ms. Martel:** But in terms of the diversified fund, the firm that was your top choice has, over the three-and-a-half-year period, done about \$10 million less in terms of return. Is that continuing for this year, because that was up to March 2004?

**Ms. Stratford:** In 2003, our top-choice candidate performed better than the other firm, because that was the year that the stock market did very well, as I explained. That's what we expect to see. The investment manager with a style that is more suited to a bull market is going to do better in those years, and we've only had one. So the other manager is now performing better because, based on market conditions, that's what you would expect from that manager.

**Ms. Martel:** But can I ask, over a four-and-a-half-year period—because that's now where we are—what is the difference between the top-choice manager's return and the second-choice manager's, both in terms of monetary value and percentage? Do you have that?

**Ms. Stratford:** I don't. I have a year-by-year record of the percentage they each made on the funds for us, the value in percentage. I don't have it in dollars. I could compute it.

**Ms. Martel:** If you could get that for the committee, that would be great.

**Ms. Stratford:** Sure.

**The Vice-Chair (Mrs. Julia Munro):** Just for clarification, could you repeat exactly what you were asking for?

**Ms. Martel:** The monetary value of the rate of return for the first—well, what the difference was between the first and second choice in terms of the rate of return for 2004-05, because right now we only have it up to March 2004 in the auditor's report.

**Ms. Stratford:** I have the most previous return, if that's what you're asking; I just haven't added it all up. I know that for the year ended 2004, the top-choice candidate brought in 8.6% on the portfolio, which computed to \$1.6 million, and the second-choice candidate brought in 10%, which computed to \$2.3 million.

**Ms. Martel:** It's 2004-05 that we're missing, which is what you will be able to get for us.

**Ms. Stratford:** We do it on a calendar year basis. It's just a different way of looking at it. So that's really the most recent annual figure that I have.

**Ms. Martel:** Let me go back to the issue of the contracts, if I might. In the auditor's report, one of the concerns that was noted had to do with the selection of the investment advisory firm. The deputy has said it would be 15 days instead of 14, as per Management Board guidelines. But it looked like 10 years had gone by before there was actually a request for a proposal for that contract. Is that correct? They came on board in 1992, and then was the next RFP in 2002 or was there one between that time?

**Ms. Stratford:** There was one in between; maybe more than one. There was at least one in between.

**Ms. Martel:** Under either legislation or policy, there is an actual termination? That contract is not open-ended. Is that—

**Ms. Stratford:** That's the one that does have a term.

**Ms. Martel:** Is it a five-year term?

**Ms. Stratford:** I think it's a three-year term, with the possibility of two extensions of up to a year each.

**Ms. Martel:** That RFP essentially went out—I don't know when the selection was—in December of 2002. So at some point this year, you would be looking at either going to tender again or an extension. Is that correct?

**Ms. Stratford:** Actually, we already posted an RFP on MERX earlier this year, and we're now looking at the responses.

**Ms. Martel:** Does that contract end in December 2005?

**Ms. Stratford:** Yes, it ends imminently.

**Ms. Martel:** It's earlier than it would have been in the contract.

**Ms. Stratford:** We were working on an extension, and the extension is up at the end of this month.

**Ms. Martel:** Oh, because it's three years? Sorry, I'm not understanding this. I thought the contract for that firm, that RFP, had gone out in December 2002, so even if you had a three-year contract, it would be ending in December 2005.

**Ms. Stratford:** I'd have to check the exact dates. I know it's a three-year term, the term is up and we're now operating under an extension. I guess the date of the contract must have been sooner than 2002. It must have been 2001.

**Ms. Martel:** I didn't think it was, only because it said on page 37 of the auditor's report that the "contract was most recently granted to the investment advisory firm in December 2002 at a cost of approximately \$225,000 over two years." The contract is not three; it's two. That's where the change is.

*Interruption.*

**The Vice-Chair:** Could we just have you make the comment up at the table, so that it's recorded in Hansard? You should identify yourself, if you could.

**Ms. Laurie Redden:** My name is Laurie Redden. The answer I was giving related to the term of the current contract for the investment consultant. We are going to

double-check the initial commencement date. The term of the contract provided for a fixed term of two or three years, with two possible extensions of up to one year each. Even though the contract started in December of a year, on the last extension, which we invoked last December, the decision was made to extend it for less than one year, which is why it's coming due and we're in the process of re-tendering now. That's why it's coming due before December 2005.

**Ms. Martel:** Can I be clear on what the role and responsibility of the investment consultant is? What services are they providing in your office?

**Ms. Stratford:** The investment consultant reviews the reports that we get on a quarterly basis from our investment fund managers and provides us with reports analyzing their performance based on the benchmark, compared to each other, and based on other kinds of events that are affecting the world's economy, so that we have some perspective on all that. They're available to us for any kind of advice we might require. We're able to call them up and ask them questions about anything we think they can help us with.

Their other major function is with the manager selection. When we're ready to look at hiring new fund managers going out to tender, then we would use that firm to assist us in the process. Most kinds of funds that operate like ours have that kind of consultant and that kind of expertise, because there is a very accepted way of making that search. Our firm, and most of these consultants, have expertise in that area.

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**Ms. Martel:** Can I ask one final question on that? The auditor said that the investment firm that was chosen last time was not registered with the OSC. Is that now a requirement in this competition?

**Ms. Stratford:** No. It's our understanding that registration with the OSC is not necessary for this kind of consultant. We did a search of the top consultants we know of to see if any of them were registered. None of them were. It's our information that it is just not required unless they are going to be giving specific advice on individual buy and sell decisions on a stock. They don't do that. They just give general advice in terms of what the stock market is doing overall and how people have done relative to benchmarks. They don't tell you whether you should buy or sell this or that. That's when you would require registration with the OSC.

**Mr. Zimmer:** I have a question or comment having to do with the selection process and this issue of other criteria. It's not unusual in the private sector, for instance, on RFPs that a business is doing, that when they have an RFP out, they have this idea that it is not necessarily the lowest bid. The analogy in your case would be to the highest return. If there are bids that are within a range, they can choose a bid that's not necessarily the lowest bid. They may revert to other criteria, the compatibility of the company, the mission statement of the company and a whole host of other criteria that would trump the lowest bid. I guess the analogy in your

case is the highest return. I wonder if you could help us to understand what some of those other criteria are that you look at that would trump the highest return bidder?

**Ms. Stratford:** Our investment advisory consultant whom we were just talking about helped us with that and provided us with the industry-standard criteria that funds would look for in terms of performance from a potential fund manager. Those things are matters such as investment style. Managers have different styles. Some are more value-oriented. They tend to hold stocks for a long period of time. They are more conservative. Others are more growth-oriented. They tend to turn over their stocks more aggressively and are looking for quicker gains. Those kinds of managers are obviously less conservative. You would be looking to see what is the investment style or philosophy of the firm. You would be looking for the stability of the firm. What has the turnover been? Are people coming and going all the time? Are people tending to stay there? What is the ownership of the firm? Do the staff have a piece of the firm and therefore a stake in it and a long-term interest, or are they all employees?

You look at the record on client service and the Greenwich survey I alluded to earlier. It gives information there about what other clients of that firm have said about the type of client service they are getting. In other words, is this firm able to explain what they have done? Will they come out and talk to you if you want them to come and have a meeting and explain performance or talk about issues? They rank them on that basis. They also look at the firm's reputation generally. Again, the Greenwich survey is useful for that. There are a large number of other things that are important when you are deciding where you are going to place your money because, obviously, you want this firm not only to have done well in the past, but you want it to be around for the long term. You want it to have the kind of stability, expertise and reputation that you really feel you can put your trust and your client's trust in it.

**Mr. Zimmer:** I have one other question—a short matter. I guess you've got people's assets and money you're managing, and they may not be at the older end of the range but somewhere in the mid-range. Of course, on life expectancy, if you're anticipating that someone's going to live a long life, that triggers one investment strategy. I suppose if health concerns develop and you have reason to think their life expectancy is going to shorten, you want to move the investments into other things. So there's a tie-in there with what you know about the person's health status. What challenges have you got when you're trying to make some inquiries in figuring out if somebody has got some health problems that have developed—or for other reasons—that would make you want to change the investment strategy? How responsive is the health care information?

**Ms. Stratford:** As you know, unlike in the private sector, where an investment fund counsellor would simply ask the client, "What's your tolerance for risk?" and, "How's your health," we're unable to do that with our clients. Most of them would not be able to provide us

with helpful information. So we have to look for other sources of information on their health status. Obviously, we would speak with medical professionals, like their doctor. If they're in a long-term-care facility, we would be checking with the nurses there, the health care aides, whoever we could really get an opinion from. But this has never been an easy task.

We have a health questionnaire our staff have to fill out. They have to be as diligent as possible in trying to find out the situation, but it's not always easy to get reliable information. The health care professionals in these institutions are extremely busy. To get them to sit down and really analyze a patient's file and then actually give you an opinion on how long an investment horizon they think that person might have is a difficult matter, even in the best of times—to pin down a health care professional in terms of life expectancy, where you're dealing with an elderly person. Someone can appear well and be doing well for their age, yet that may not be a guarantee of a long-term kind of outlook for them. So we have to gather all that information as best we can and then we make a judgment call.

If we are not certain on health, if we have some doubts, if there are some real gaps in the information, then we err on the side of being conservative and put them into fixed-term and very safe investments. We don't consider them long-term prospects.

Only when we have health information that we think is pretty reliable would we then assess them as being a long-term prospect, provided the other things in their situation call for it, such as they've got a lot of cash they aren't going to need and they're able to afford it otherwise.

The health information is a challenge.

**Mrs. Sandals:** One of the things that is mentioned in the auditor's report is the issue of distribution of assets to minors who have reached the age of majority. Maybe because I live in a university town and often have students at my office talking about the stresses in funding post-secondary education, I'm rather sensitive to this. I'm looking at the amounts here. It talks about 600 former minors with about \$4.6 million in assets. Just roughly, that would be something over \$7,500 or \$8,000, on average, per student. While that may not seem like large dollars, for a young person that age, it could be a tremendously significant amount of money.

I see that the issue around notifying them seems to have been done on a more timely basis, but then they seem to get lost and there's not much follow-up. I'm wondering if there has been anything done to address that situation of tracking down these young folks where you have some assets that I'm sure they could use quite desperately.

**Ms. Stratford:** We've been doing a lot of work in this area since the auditor first raised it back in 1999. I'm happy to say that we're now down to 419 as the remaining number of former minors whom we have yet to locate, and their assets total about \$2 million. That's what we have left. As you note, it's not insignificant. We

would like to find those people. However, for that group, we have exhausted all the searches that are available to us at present. Obviously, we send letters to last known addresses and those kinds of obvious things. We are able to get information from the Ministry of Transportation to try to track them that way.

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The last alternative for those people, which we're now working on, is to try to get information from the Ministry of Health. Obviously, there are a lot of privacy concerns when you're trying to get information about people, and we certainly don't want to infringe on any of the privacy regulations around any of that information. So we've been having to tread quite carefully and we're working very carefully with these other ministries, health in particular, in terms of having them attain the regulatory power to give us the information, and then having a very tight memorandum of understanding so that it's very clear what the type of information we're getting and the reason for it, and only in these circumstances will we get it. We're just about there in terms of working with the Ministry of Health to enable us to get at some of this information or enable them to access that and then tell us if they can find these people. We're hoping we're going to be able to find quite a few of them that way. If not, we're going to have to really think hard about what we do for the rest.

This problem will hopefully, though, not repeat itself in the future. When we took over the function of the accountant, it had not been the practice to look for children when they came of age and became entitled to their money. So many years had gone by in some cases between the time when the money was paid in and the time that the child became eligible, and then the time that the money had sat there. So it was very hard for us, when we first opened up those files, to try to locate the children in question. There wasn't much information on file, and there hadn't been requirements in the past to really put a lot of information on file when the original payment was made.

We've changed those rules so that when payments are made now, we have a lot more information about where we're going to look for that person when the time comes to locate them. So, as I say, I think we will overcome this obstacle in time with the better information we'll have already and then the improved search techniques for finding people generally. But, as you say, it's an area of concern, and we're certainly not giving up on these last 400 or so. We're going to do everything we can to find them.

**Mrs. Sandals:** For the minors who are in the system now, do I understand that you're doing a closer job of tracking them continuously? It sounds to me like you've got a name and a dollar amount and then you've lost track of them long before they got to the age of majority. Just instinctively, it would seem to me that the thing to do is keep track of them while they're minors so that when they reach 18, or whatever the magic age is, you already know where they are instead of looking for them after they're lost.

**Ms. Stratford:** Right, and we do make better efforts in that regard. We send out statements and keep better tabs on them overall. As I say, I think we've got a much better handle on the situation. We shouldn't see this kind of thing in the future.

**Mrs. Sandals:** Good. Thank you very much.

**Ms. Laurel C. Broten (Etobicoke-Lakeshore):** I want to pick up where Ms Sandals left off. She was speaking to you about locating minors. I want to ask, in terms of the auditor's concerns, about the backlog in administering other estates and distributing assets, and, in particular, what efforts have been made to respond to that concern?

**Ms. Stratford:** This is an area that we had been working on, again, continuously since the last report. There were some older files that we had not exhausted searches on. We redoubled our efforts to try to find those beneficiaries, and we're making good inroads there. We have hired additional staff for that area, so the caseloads now are more manageable and they're able to get through more cases in a year. We've also improved our search techniques. The Internet has been of a lot more assistance in the past few years than we used have available to us, so we're able to find people more easily.

Overall, we're seeing a much better search success rate, and with our additional staff we're able to get through those files quicker. Once we clear this original group of older files—there are about 400 of them—we'll be more or less current in terms of our ability to look through those files and begin the searches for heirs. It does take time, as the auditor notes in the report, to actually locate heirs and distribute money, and that will vary with every single file depending on where, ultimately, we find those heirs, where we have to look for them, how many of them there are and so on. But certainly, in terms of getting on top of the files, getting the searches underway, we're now in a better position staff-wise to do that, and the search techniques we have available are much improved.

**Mrs. Munro:** I'd like to just take a couple of minutes to ask you a question about the charities part of the auditor's report. In his report, he noted that there's an ongoing delisting of charities through the Canadian Revenue Agency and then the concern that you have in terms of the question about the disposal of any monies.

The report suggests that 350 charitable organizations out of 1,100 had special mailings sent to them and more than 300 didn't respond. I just wondered if you could give us a sense of what kind of tools are available to you and what happens, because obviously from the public perspective the appropriate winding down of these monies is quite significant. My question, then, is with regard to what options you have, what tools you have.

**Ms. Stratford:** Our best source of information is the Canada Revenue Agency, as the federal overseer of charities. Previously, we were not able to get a great deal of information from them, but we've been working in the past couple of years on working out some protocols with them to get more information. I'm happy to say we've

been very successful in that regard, particularly over the past year, in working out agreements to share information.

The project mentioned in the auditor's report undertaken by our office was kind of a one-time special project. Our concern is with charitable property and what becomes of it when these charities wind up. Previously, Canada Revenue Agency would publish in the gazette once a month a list of charities that had been deregistered, but back in 2003 they published an annual kind of roll-up list, and that's the one that caught our eye. We thought to ourselves, "I wonder what's happening with these?" We sent out a sample of letters and did not get much of a response, as was noted. We were kind of thinking, "Where should we take this?"

The auditor was concerned that we hadn't actually followed up on it and suggested that we should focus our efforts on companies that had wound up that maybe were of real concern, because there would be lots of these where there wouldn't have been any property and it's not a concern at all. The question was, how do we know which ones those are? That's where we started talking to our counterparts at the federal level and working out an agreement. So we now have a protocol with them where they will let us know when they've deregistered some of these charities—which might be of concern, which might have some property that does need following up—and that's the group we'll be targeting.

We got our first batch of information at the beginning of this year, and we're just looking at it now. We will be following up on the ones that really seem to be of concern.

**Mrs. Munro:** What kind of opportunity do you have if you find something that creates some concern in terms of the way in which the disposal of any property is being made? What's your next step?

**Ms. Stratford:** Our first step, obviously, would be to ask the directors, "What's happened here?" Oftentimes we find that it's really a matter of education. People start up charities and have perfectly good intentions, but they don't understand or appreciate all of the formalities that go with incorporating a company and dealing with property. Often, after we speak to them about it, they understand. We put them right and everything is resolved.

But there are certainly cases where the people perhaps don't have as pure motives, and those are the ones that we follow up. If we don't get satisfactory answers from the directors concerned, we do have the power to go to court and ask the judge to order that that charity produce its accounts and satisfy the court that everything has been managed appropriately. If the court is not satisfied, then they have remedies that they can invoke against the charity.

**The Chair:** Ms. Martel.

**Ms. Martel:** I want to return to the question of locating heirs: I heard you say that there were about 400 left. Is that 400 of the pre-1996 files where you are trying to track down heirs, or is that 400 in total, including current searches?

**Ms. Stratford:** That's the special—

**Ms. Martel:** OK, so 400 of pre-1996. Now, the auditor had used a figure of 1,800 estates where the heirs needed to be located as of December 2003. Are those post-1996 files, and is the 1,800 still relevant, or is it less than that now?

**Ms. Stratford:** The current number is 1,700, and the 400 are in that number. So the 1,700 includes the 400 older files that we're working on with special efforts to try and clear because they're aging.

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**Ms. Martel:** Of the 1,700 in total, which is still fairly significant, what is the asset value attached to those 1,700 claims? Do you have a sense of that?

**Ms. Stratford:** It's about \$70 million.

**Ms. Martel:** Seventy million dollars. Were the new staff hired to deal with the pre-1996 claims, or is everybody doing a mix of new and old, if I can describe it that way?

**Ms. Stratford:** They weren't hired for that, but obviously they're helping the overall productivity. There is a group that remains focused on those earlier files, but they're also doing some new files.

**Ms. Martel:** As the new files come in, are you able to even keep up on the new files on an annual basis?

**Ms. Stratford:** Files get attention based on a number of things. If files have wasting assets, houses that need attention and so on, obviously we need to get to those first. For files of small value, we would do some easy searches, Internet-based searches that you can do for free. Obviously if the estate is not worth a lot, you're not going to spend all of the money looking for people. So we might wait a little bit on those files. There is a rationale the staff employ in terms of priorities for which files come first.

As the auditor notes, we're disposing of more files than we're taking in every year, so we are making definite inroads into the workload, but there will always be work on hand. It's just the nature of it. There are always going to be files in progress, at varying degrees of completion.

**Ms. Martel:** I guess I'm not clear: If you're dealing with the current number coming in on a regular basis and you had 400 of pre-existing 1996, where does the balance come from? If you've been able to keep up currently—I understand the group that are very difficult because you're dealing pre-1996, but there still must be a whole group in there that even after 1996 you weren't able to keep up on.

**Ms. Stratford:** Like I said, there are varying ages, but there may be good reasons why they aren't out the door by now. Some of these files are incredibly complicated in terms of the heir searches that have to be undertaken, in terms of the family trees that have to be traced and in terms of the sheer number of heirs we find. Until we are able to distribute the estate to all the heirs, we can't actually close the file. We may be able to distribute some of the money—once we've found a certain number of heirs, we're able to do an interim distribution—but if there are still heirs out there who we can't find, but we

know they're there, we have to keep the file open. There are a number that would be like that. There are a number that are in process, and we're searching and it's taking time. There are a number where we found heirs, but they haven't submitted the paperwork we require from them. So they're at all different kinds of stages, but basically we get about 240 in every year and we send about 300 out the door.

**Ms. Martel:** The last one, where the heir needs to submit the appropriate documentation as proof, what is that percentage or value in terms of the 1,700 in total? Is that a significant portion where you've located somebody but they're not sending in what they need to?

**Ms. Stratford:** I don't have exact numbers in terms of a breakdown of where things are from that perspective.

**Ms. Martel:** Just in terms of the overall total, you're working on the 400 and you essentially need some information, probably from the Ministry of Health, to do some tracking there. If I take those out of the mix, the balance, the 1,300 that are left, do you have a sense of when you'll be able to deal with those? Because it would represent a fairly significant amount of money.

**Ms. Stratford:** As I say, we're kind of dealing with them all the time. It's not like there are some sitting, getting dusty in the corner that no one has lifted the cover of. All the files are looked at when they come in and then they are prioritized, in terms of, some might have wasting assets and we have to get to those right away, others are of small value and so we know they are of less priority. They are all kind of triaged, if you will, and pursued in what seems to be the most appropriate way.

The project continues, because those are older files, without question, that need attention and we want to get those dealt with. Once we're past that older group of files and we're with what we call the current group, it then depends on this priority-setting. So they are all in various stages; nothing is sitting there absolutely unattended to.

**Ms. Martel:** I want to be clear about the contracts that are in place for the various private sector firms that are helping you with investments. The previous contract for the investment advisory firm was, I think, listed as \$225,000 for two years. What's the posting on MERX now for the value of the contract?

**Ms. Stratford:** We would wait for them to tell us what their fee was. We would ask for the service, and they would get back to us with what they would charge. We wouldn't actually mention a number.

**Ms. Martel:** I'm curious about that. I'm trying to find the right page where the auditor talked about the contract that went to the firm in 2002; it was approximately \$225,000 over two years. Are you saying that figure of \$225,000 was only arrived at after they told you what their fee was?

**Ms. Stratford:** That would have been the fees they charged us over the course of that term of the contract.

**Ms. Martel:** But how do you make decisions about how to go to Management Board? One of the other criticisms was—you must have a figure.

**Ms. Stratford:** We had hired them. We go through the selection process. The firms put in their proposals,

and in their proposals they say, "Our fee for these services will be X." We choose one of them, and then that becomes the contract price. Once they start delivering the services, they're charging their fees according to that contract. So that figure would have been what fees were paid to that firm during that time, I believe.

**Ms. Martel:** Do you just make an assumption because the Management Board guidelines say that at \$100,000 you should be going out to open tender?

**Mr. McCarter:** They would put out a contract saying, "Here are the services we require. Can you bid and tell us how you'll fulfill the services, what people you're going to put on the account, what type of reporting you're going to get and what your fee is going to be?" Then the PG and T would look at the proposals coming in and basically make an assessment on all these things and select a winning bidder; I'm assuming that's how the process would work. Then that would be put into a contract with the successful bidder. One of the terms of the contract would be, "We'll pay you \$200,000"—whatever their bid price is—"over the period of the contract."

**Ms. Martel:** Was that the same, not just for the investment firm that's helping with the selection, but for the managers as well?

**Mr. McCarter:** Yes, and the same thing for the money market firm; 5.0 basis points, or whatever the fee is, would be in the contract that's basically signed and negotiated after they've picked the winning firm.

**Ms. Martel:** But Management Board guidelines say that if it's over \$100,000 in consulting services, you need to have a tender, right?

**Mr. Cheung:** You have some ballpark figure, some idea of what it's likely to cost.

**Ms. Martel:** So in each case I would make the assumption that the office, whatever contract they're looking for, should actually go to tender, because it's going to come out over \$100,000. Do you see what I mean? You have to make that assumption, right?

**Ms. Stratford:** We would know in advance. We know by experience that it's going to cost us around this figure, so we would apply the rules of Management Board that govern that particular figure.

**Ms. Martel:** Right now for the investment advisory firm, which is what is out on MERX, we don't know what that charge is going to be. That would be worked through depending on what is coming from the companies involved.

**Ms. Stratford:** Right. Based on what we've been paying before, we know it's going to be around that. It might be less; it might be more.

**Ms. Martel:** Can you tell me what the contracts are, then, with the three other fund managers you have?

**Ms. Stratford:** What the fees are?

**Ms. Martel:** Yes.

**Ms. Stratford:** They aren't quantified numbers; they're percentages of the funds. I can go through them, if you like. It's a bit complicated. The diversified fund: Up to \$5 million, they charge 0.5%; the next \$15 million, it's 0.3%; and the next \$100 million, it's 0.2%. That's

one of the firms. The other firm has a slightly different scale: They charge 0.5% up to \$5 million; the next \$5 million is 0.35%; the next \$15 million is 0.25%; the next \$25 million is 0.2%; the next \$50 million is 0.15%; and over \$100 million is 0.1%.

**Ms. Martel:** The second one was the fixed-income fund?

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**Ms. Stratford:** Those were the two firms for the diversified fund. We've talked about the money market fund; that's the one in the report. The bond fund is a \$100,000 annual flat fee, and there's a most-favoured-client clause in there which gives us some other kind of adjustment.

**Ms. Martel:** What does that mean?

**Ms. Stratford:** It means we get their cheapest rate. After five years, you get into some cheaper rate, if we keep them that long.

**Ms. Martel:** A cheaper rate on an annual basis—somewhere under \$100,000—or is that in addition to the \$100,000 flat fee?

**Ms. Stratford:** The \$100,000 is for the five years. It's a flat annual fee for the first five years, and after that it's the favoured client.

**Ms. Martel:** And you haven't had them that long, or have you?

**Ms. Stratford:** No.

**Ms. Martel:** You'll be coming up to that. No. They were selected in 2002, so you've got a ways to go for them.

**Mr. Zimmer:** One of my little pet projects here in the public accounts committee is that I always ask a question about the challenge of IT. We hear from all of the ministries across the board that the tasks that they're responsible for have considerable IT challenges. What are your IT challenges?

**Ms. Stratford:** We have many. As you note, it is a concern. IT improves practically every month, and you really want to get the benefit of those improvements if you can, but obviously, you have to do the best with what you have in terms of resources.

We were fortunate enough to get approval to overhaul our information technology system. We've had our legacy system in place for a number of years; it's serving us pretty well. But there are a lot of improvements that have been made in technology since we got that, which we really want to take advantage of. Our system is DOS-based, which means you have to enter codes for everything. There are no drop-down menus, there are no windows—none of the things that make it user-friendly. For staff, it's a daunting exercise just to learn the system. We want to make it easier for them, so that they can be more efficient and avoid duplication and all of the kinds of things that come from a difficult-to-manage system.

We have received approval from Management Board to replace the system, and we have hired consultants to help us with that. We're about halfway down the road, I would say, to having that new system in place. We have built the foundation for the new system, and we're now

looking at each business area and figuring out how best to configure the system for their needs.

Our business is unlike any other, I have to say. The various consultants we've had in to talk to us about it have all been surprised at the diversity of functions we perform. They're used to creating a system for a business that is really a single line of work. But in our office, we're fulfilling about 14 different functions, and we need IT that will help us with all of those, so it is a very large undertaking. We certainly didn't underestimate it.

It's going to take some time, but like I say, we're about halfway there. We have seen some good results already, in terms of tracking systems that we were able to implement, but there is more work to be done. We're certainly optimistic that once it's done, it will really get us down the road to improving our efficiency, saving time on things, eliminating duplication and giving, overall, better client service.

**Mr. Zimmer:** Just on that, can you give me just one or two examples of how leading-edge IT might reflect directly in the management of the various investment portfolios, such that it means, at the end of the day, more money for the—

**Ms. Stratford:** Generally speaking, the technology that we're introducing is enabling staff to access information from wherever it lies in the office. Right now, everything is separate. You have to enter each individual system in order to find out the status of things, and when you enter something in one part of the system, if someone else needs it in another part, they have to re-enter it over there. It's extremely tedious, and because you're entering the same data more than once, there is more opportunity for error. So we're looking, of course, to eliminate that opportunity by having a single port of entry and a system that's transparent so that anyone who needs something can get it from entering the system through one portal.

In terms of investments, just like everywhere else, there will be improvements in terms of that ability to access data, but our major hope for the system is that it will free up time of staff. Instead of sitting at their desks entering codes and trying to do things in this very top-heavy fashion, they will have more time to spend with the clients. They will have more time to actually do the things that only people can do, which is to talk to those clients to figure out what their needs and concerns are, to talk to service providers to figure out what kind of deals can be had for the clients, and to talk to health care professionals about what our clients really are needing to improve their quality of life. Those are the things that we'd really like our staff to be spending their time on, not sitting at their desk entering codes. That, I think, would be the largest benefit we would hope to yield from IT.

**Mr. Patten:** I'd like to explore a little bit the whole area of property guardianship. I ask for a specific reason, and I shall share an experience that we've had, but I want to preface my remarks by acknowledging and appreciating the comments you made about the diversity and the delicacy and the overall responsibilities that you have

with people who are vulnerable. This is really a social mission with legal and financial implications etc.

When you talk about property, do you have your own property managers internally? What's your relationship with the private sector or real estate firms in terms of managing and selling assets or things of that nature?

**Ms. Stratford:** When it comes to property management and the sale of property, we tender for those services and hire private sector suppliers.

**Mr. Patten:** What do you tell them when you engage with them, if you accept a real estate firm to act on your behalf in a particular area? What are the conditions or the arrangements that you make with them? Is it purely a financial arrangement?

**Ms. Stratford:** Our duty is to our clients. If we're selling a house for a client who is a guardianship client, or we're selling a house for an estate, our duty is the same. As fiduciaries, our obligation is to realize the best price that we can on that asset. So we would give the same instructions to the real estate agent that you or I would give, I think: Just to get the best price possible.

**Mr. Patten:** That was my understanding—what you just described—as well. I would sort of posit the assumption that in many areas, the community in which the properties are held may also be suffering from many social problems. The example I give is one in which we had someone who became a guardian of an estate of someone who owned a house. The use of that house was questionable. The person ended up being imprisoned, and your office ended up engaging Royal LePage. They then sold this house. We discovered in the community—and these are people fighting for the quality of their community—that the person they sold it to was the same guy who owned a crack house down the block that had just been closed down. So you can imagine how delighted the neighbours were. I pursued this personally. I ended up speaking with the real estate agent—not the agent, but the company—and, of course, they don't do this kind of investigation. So my point is that this obviously adds another question to what is there, but in terms of your

management of assets for your clients, there is the other side and that is the community and the community impact.

Now, we do this with the renewal or the sale of a licence with the LCBO. We ask the community, "Is there any reason why this licence should or should not be renewed?" We also have generally, in community issues, community impact statements—this sort of thing. I'm not trying to add an extra burden to your job, but frankly, the way in which some of these happen adds another burden on the community.

Given your strong sense of your growing appreciation for the complexity of what's there in the interests of helping people to retain or maintain their assets, I would suggest to you that there's a community dynamic that may or perhaps should be reviewed.

**Mr. Segal:** We'll certainly take your comments into consideration. You've touched upon a very difficult issue. It sounds like the house in its original state had some problems as well, and maybe some work has to be done in terms of community education that may involve the real estate sector.

The problem you raise is much broader than the one house we were involved with. It comes up all the time in terms of the seizure of property in relation to criminal conduct, the proceeds of crime, and then selling off those assets to get monies back for the police and the government etc., and those kinds of problems could occur. So it's a bit tricky, bearing in mind that the law is very clear in that there's a fiduciary responsibility to get the best price possible. You've raised a vexing issue. It doesn't admit of an easy solution, and we have to be mindful as well of our legal obligations, although you rightly point out that there's a broader dynamic.

**The Chair:** Are we finished? No further questions?

Thank you very much, Mr. Segal.

**Mr. Segal:** Thank you, Chair. Thank you, committee.

**The Chair:** We'll grab a bit of lunch and then come back and have a little discussion.

*The committee continued in closed session at 1153.*







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